

## Brune, Adrienne

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**From:** Brune, Adrienne  
**Sent:** Tuesday, April 10, 2018 10:44 AM  
**To:** 'Dipti Singh'; Carroll, Bart  
**Cc:** 'Stephanie Toti'; 'Kathrine D. Jack, Jack Law Office LLC'  
**Subject:** Request for Production 3  
**Attachments:** RFP # 3 (2 of 2) Redacted reduced size.pdf

Good morning:

In reviewing the documents produced in Respondent's Response to Request for Production # 3 in the second of two emails sent, I saw there was privileged information that inadvertently was not redacted. This attorney-client privileged information pertained not only to this litigation, but also to information beyond the scope and subject matter of this litigation. Please see the attached *redacted* RFP # 3 (2 of 2) and please delete the email sent 04/09/2018 at 9:43 a.m. EST.

This inadvertent production does not waive the attorney-client privilege that exists between counsel for the ISDH and its clients. I appreciate your attention to this matter.

### ADRIENNE BRUNE

*Attorney*

*Agency Ethics Officer*

*Office of Legal Affairs  
Indiana State Department of Health  
317.233.7270 office  
317.233.7143 fax  
[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)*



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## Brune, Adrienne

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**From:** Brune, Adrienne  
**Sent:** Monday, April 09, 2018 1:27 PM  
**To:** 'Kathrine D. Jack, Jack Law Office LLC'; Dipti Singh; Carroll, Bart  
**Cc:** Stephanie Toti  
**Subject:** RE: Respondent's Responses to Petitioner's First Request for Production of Documents (5 of 5)

That's correct. As additional documents are generated, the ISDH will produce those, as well. Sorry about the confusion from the bounced back emails.

Adrienne

**From:** Kathrine D. Jack, Jack Law Office LLC [mailto:kjack@jacklawoffice.com]  
**Sent:** Monday, April 09, 2018 12:26 PM  
**To:** Brune, Adrienne <ABrune@isdh.IN.gov>; Dipti Singh <dsingh@lawyeringproject.org>; Carroll, Bart <BCarroll@isdh.IN.gov>  
**Cc:** Stephanie Toti <stoti@lawyeringproject.org>  
**Subject:** RE: Respondent's Responses to Petitioner's First Request for Production of Documents (5 of 5)

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Adrienne,  
I've taken a screen shot of the list of files I've received from you for ISDH's discovery responses today. See attached. Can you confirm that this list includes all the documents that ISDH intended to produce? Just want to make sure we are not missing anything.

Thank you!

Kathrine Jack

Jack Law Office LLC  
One Courthouse Plaza  
Greenfield Chamber of Commerce Building  
Post Office Box 813  
Greenfield, IN 46140

Office: 317-477-2300  
Fax: 317-515-6377  
[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)  
[www.jacklawoffice.com](http://www.jacklawoffice.com)

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----- Original Message -----

Subject: Respondent's Responses to Petitioner's First Request for  
Production of Documents (5 of 5)

From: "Brune, Adrienne" <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>

Date: Mon, April 09, 2018 9:23 am

To: Dipti Singh <[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)>, "Carroll, Bart"  
<[BCarroll@isdh.IN.gov](mailto:BCarroll@isdh.IN.gov)>

Cc: "Kathrine D. Jack, Jack Law Office LLC" <[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)>,  
Stephanie Toti <[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)>

Attached: RFP # 13.

**ADRIENNE BRUNE**

*Attorney*

*Agency Ethics Officer*

*Office of Legal Affairs*

*Indiana State Department of Health*

*317.233.7270 office*

*317.233.7143 fax*

*[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)*

*[www.StateHealth.in.gov](http://www.StateHealth.in.gov)*



**Indiana**  
*A State that Works*

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## Brune, Adrienne

---

**From:** Dipti Singh <dsingh@lawyeringproject.org>  
**Sent:** Thursday, April 05, 2018 10:26 PM  
**To:** Carroll, Bart; Brune, Adrienne  
**Cc:** Stephanie Toti; Kathrine D. Jack, Jack Law Office LLC  
**Subject:** Whole Woman's Health Alliance v. Indiana State Department of Health, Cause No. ACL-000132-18 - Email 2 of 2  
**Attachments:** WWHA000001\_WWHA001521.zip

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Dear Bart and Adrienne,

Please find attached documents responsive to Respondent's First Set of Requests for Production that are Bates numbered WWHA000001-WWHA001521. Please note that the attached contain material designated as confidential and/or trade secrets.

Sincerely,

---

**Dipti Singh\***

*(Pronouns: she, her)*

Senior Counsel & Strategy Director

Lawyering Project

811 W. 7th St., 12th floor

Los Angeles, CA 90017

Phone: (646) 480-8973

Fax: (646) 480-8828

[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

\*Licensed in California

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## Brune, Adrienne

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**From:** Carroll, Bart  
**Sent:** Friday, February 23, 2018 4:19 PM  
**To:** john@johnbucy.com; kjack@jacklawoffice.com; stoti@lawyeringproject.org; dsingh@lawyeringproject.org  
**Cc:** Brune, Adrienne  
**Subject:** Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18  
**Attachments:** Notice of Service of Discovery Requests.pdf; ISDH First Set of Interrogatories to WWHA.pdf; ISDH First Set of RfP to WWHA.pdf; ISDH NonParty RfP to Whole Womans Health LLC.pdf; ISDH NonParty RfP to Whole Womans Health of Baltimore LLC.pdf; ISDH NonParty RfP to Whole Womans Health of Beaumont LLC.pdf; ISDH NonParty RfP to Whole Womans Health of Fort Worth LLC.pdf; ISDH NonParty RfP to Whole Womans Health of Fort Worth LLC.pdf; ISDH NonParty RfP to Whole Womans Health of McAllen LLC.pdf; ISDH NonParty RfP to Whole Womans Health of Peoria LLC.pdf; ISDH NonParty RfP to Whole Womans Health of San Antonio LLC.pdf; ISDH NonParty RfP to Whole Womans Health of the Twin Cities LLC.pdf

Good afternoon, John, Kathrine, Stephanie, and Dipti,

Please find attached electronic copies of the discovery requests in this matter. Please let us know if you are willing to waive the 15 day period to object to the non-party requests, and we will send them out.

Thank you,

**BART CARROLL, JD**  
*Litigation Chief*

*Office of Legal Affairs  
Indiana State Department of Health  
317.233.7766 office  
317.234.6278 fax  
[bcarroll@isdh.in.gov](mailto:bcarroll@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)*



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## **Brelage, Rebecca**

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**From:** Dipti Singh <dsingh@lawyeringproject.org>  
**Sent:** Thursday, March 01, 2018 6:22 PM  
**To:** Carroll, Bart; Brune, Adrienne  
**Cc:** Stephanie Toti; kjack@jacklawoffice.com; john@johnbucy.com  
**Subject:** RE: Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18

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Bart and Adrienne,

Whole Woman's Health Alliance waives the 15 day period to object to the Department's non-party requests referenced in your e-mail of February 23, 2018. We reserve the right to object to any future non-party requests.

Sincerely,  
Dipti

**From:** Dipti Singh  
**Sent:** Friday, February 23, 2018 2:04 PM  
**To:** 'Carroll, Bart' <BCarroll@isdh.IN.gov>; 'Brune, Adrienne' <ABrune@isdh.IN.gov>  
**Cc:** Stephanie Toti <stoti@lawyeringproject.org>; 'kjack@jacklawoffice.com' <kjack@jacklawoffice.com>; 'john@johnbucy.com' <john@johnbucy.com>  
**Subject:** RE: Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18

Good evening, Bart,

Thank you for sending these requests. We will review and get back to you next week about your request to waive the 15 day period to object.

Sincerely,  
Dipti

**From:** Carroll, Bart [<mailto:BCarroll@isdh.IN.gov>]  
**Sent:** Friday, February 23, 2018 1:19 PM  
**To:** [john@johnbucy.com](mailto:john@johnbucy.com); [kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com); Stephanie Toti <[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)>; Dipti Singh <[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)>  
**Cc:** Brune, Adrienne <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Subject:** Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18

Good afternoon, John, Kathrine, Stephanie, and Dipti,

Please find attached electronic copies of the discovery requests in this matter. Please let us know if you are willing to waive the 15 day period to object to the non-party requests, and we will send them out.

Thank you,

**BART CARROLL, JD**

*Litigation Chief*

Office of Legal Affairs  
Indiana State Department of Health  
317.233.7766 office  
317.234.6278 fax  
[bcarroll@isdh.in.gov](mailto:bcarroll@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205       )  
Austin, TX 78754                               )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS  
AND RECORDS TO A NON-PARTY**

To:    Whole Woman's Health of McAllen, LLC  
        Amy Hagstrom-Miller, Registered Agent  
        8401 North IH 35, Ste. 1A  
        Austin, TX 78753

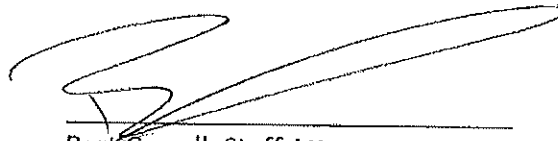
Division of Acute Care, Indiana State Department of Health, by counsel, Bart Carroll, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Trial Rule 34(C), and Ind. Code 16-234 et al., requests that Whole Woman's Health, LLC (hereinafter "Facility") produce for inspection, examination and copying within thirty (30) days after service hereof, to Respondent's attorney, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, or at a time and place convenient to the Facility, copies of all records related to the above matter, including but not limited to the following:

1. Copies of documents and records maintained by the Facility as described below:
  - a. Articles of incorporation, certificates of formation, by-laws, and any other organizational documents and records;
  - b. Documents and records amending the organizational documents and records;
  - c. Operating agreement of Whole Woman's Health of McAllen, LLC;

- d. Any and all meeting minutes of Whole Woman's Health of McAllen, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of McAllen, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
- h. All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws by Whole Woman's Health of McAllen, LLC.

Pursuant to the Indiana Administrative Orders and Procedures Act and Indiana Trial Rule 34(C), the Respondent serves simultaneously herewith a subpoena duces tecum upon the Facility for the above requested documents and records. You are advised that Indiana Trial Rule 34(C) provides that you are entitled to security against damages resulting from this request and that you may respond to this request by submitting to its terms, by proposing different terms, by objecting to specifically or generally to this request, by serving a written response to the undersigned within thirty-three (33) days of service, or by moving to quash, as permitted by Trial Rule 45(B). The undersigned agrees to reimburse you for the reasonable costs of copying the requested documents, however, if the expected reproduction costs exceed \$50.00, please contact the undersigned for approval before preparing the response.

Respectfully submitted,

  
Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this 26<sup>th</sup> day of February, 2018:

John H. Bucy, II  
Bucy & Associates, PLLP  
6633 Highway 290 East, Suite 104  
Austin, TX 78734  
[john@johnbucy.com](mailto:john@johnbucy.com)

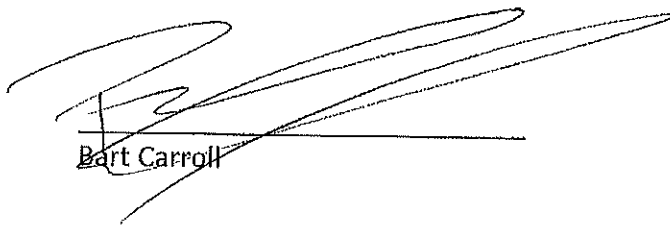
Kathrine D. Jack  
JACK LAW OFFICE LLC  
One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140  
[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)

Stephanie Toti  
Lawyering Project  
25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004  
[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

and, after a period to allow the parties to object, the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

Whole Woman's Health of McAllen, LLC  
Amy Hagstrom-Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )

Petitioner,                                )

vs.    )

INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )

Respondent.                                )

SUBPOENA DUCES TECUM

To: Whole Woman's Health of McAllen, LLC  
Amy Hagstrom-Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753

YOU ARE HEREBY COMMANDED to produce the documents and records referred to in Respondent's Request for Production of Documents and Records to a Non-Party attached hereto, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, within thirty (30) days from the receipt of the Request for Production of Documents and Records to a Non-Party and Subpoena Duces Tecum.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766





STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,     )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**INDIANA STATE DEPARTMENT OF HEALTH'S  
FIRST SET OF INTERROGATORIES**

Acute Care Division, Indiana State Department of Health (hereinafter referred to as "ISDH"), by counsel, pursuant to Indiana Trial Rule 33, propounds the following Interrogatories to Whole Woman's Health Alliance (hereinafter referred to as the "Facility"), and requests that it be answered within thirty (30) days and deemed continuing in nature so as to require the Facility to notify the undersigned of any amendment or addition to responses hereto.

**INTERROGATORY NO. 1:** Identify each and every person who is responding to these interrogatories and/or who has provided information upon which such answers are based including:

- a. the name;
- b. the mailing address;
- c. the telephone number;
- d. the position; and

- e. specifically to which interrogatory the named individual(s) provided either the entire response or assistance with the final response.

**RESPONSE:**

**INTERROGATORY NO. 2:** Identify the documents, records, reports, notes, memoranda or materials the Facility, any of its employees or its attorney intends to offer as evidence at the hearing in this cause, including:

- a. the title and date of each such document;
- b. the author of each such document; and
- c. the content of each such document.

**RESPONSE:**

**INTERROGATORY NO. 3:** Identify the witnesses the Facility intends to call at the hearing in this cause and include:

- a. their full name;
- b. their address;
- c. their telephone number;
- d. the name and address of their employer;
- e. their occupation;
- f. their job title; and
- g. a synopsis of their anticipated testimony.

**RESPONSE:**

**INTERROGATORY NO. 4:** For each individual whom the Facility expects to call as an expert witness at the hearing of this matter, state:

- a. his/her name and office address;
- b. his/her area of expertise or specialty;
- c. the subject matter on which he/she is expected to testify;
- d. the substance of the facts and opinions to which he/she is expected to testify;
- and
- e. a summary of the grounds for each such opinion.

**RESPONSE:**

**INTERROGATORY NO. 5:** For the period from January 1, 2016 through December 31, 2017, identify each member of the Board of Directors of Whole Woman's Health Alliance, and for each state the following:

- a. the name, address, and telephone of the person identified;
- b. the title, if any, of the person identified (i.e. President, Secretary, etc.);
- c. the date the person identified joined the Board of Directors; and
- d. the date the person identified vacated the position on the Board of Directors.

**RESPONSE:**

**INTERROGATORY NO. 6:** For each person who has vacated a position on Board of Directors, for any reason, in the period from January 1, 2016 through December 31, 2017, identify the circumstances surrounding their exit from the Board, and state for each person the following:

- a. the reason the person identified no longer serves on the Board of Directors (i.e. resigned, terminated, etc.); and
- b. if succeeded by another person on the Board of Directors, the name of that person.

**RESPONSE:**

**INTERROGATORY NO. 7:** At any time, state whether Whole Woman's Health Alliance had an organizational relationship of any kind with each of the following LLC organizations, including but not limited to a contractual, partner, representative, advocacy, or any other relationship:

- a. Whole Woman's Health, LLC;
- b. Whole Woman's Health of Austin, LLC;
- c. Whole Woman's Health of McAllen, LLC;
- d. Whole Woman's Health of San Antonio, LLC;
- e. Whole Woman's Health of Fort Worth, LLC;
- f. Whole Woman's Health of Charlottesville, LLC;
- g. Whole Woman's Health of the Twin Cities, LLC;
- h. Whole Woman's Health of Peoria, LLC;
- i. Whole Woman's Health of Beaumont, LLC; and
- j. Whole Woman's Health of Baltimore, LLC.

**RESPONSE:**

**INTERROGATORY NO. 8:** For each LLC organization with which Whole Woman's Health Alliance had an organizational relationship as identified in Interrogatory No. 7, state the following for each:

- a. describe in detail the nature of the relationship;
- b. identify each and every document and record of any kind which exists that states the responsibilities and/or duties of Whole Woman's Health Alliance and the LLC organization to one another;
- c. if no document or record exists which states the responsibilities and/or duties of Whole Woman's Health Alliance and the LLC organization to one another, then describe the responsibilities and/or duties in detail;
- d. identify the member of the Board of Directors who acts as the lead liaison between Whole Woman's Health Alliance and the LLC organization; and
- e. identify the member of the Board of Directors who would be the most knowledgeable about the relationship between Whole Woman's Health Alliance and the LLC organization.

**RESPONSE:**

**INTERROGATORY NO. 9:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;

- b. describe the ownership structure for Whole Woman's Health, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health, LLC.

**RESPONSE:**

**INTERROGATORY NO. 10:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Austin, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Austin, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Austin, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Austin, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Austin, LLC.

**RESPONSE:**

**INTERROGATORY NO. 11:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of McAllen, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of McAllen, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of McAllen, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of McAllen, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of McAllen, LLC.

**RESPONSE:**

**INTERROGATORY NO. 12:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner,

and/or affiliate of Whole Woman's Health of San Antonio, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of San Antonio, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of San Antonio, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of San Antonio, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of San Antonio, LLC.

**RESPONSE:**

**INTERROGATORY NO. 13:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Fort Worth, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Fort Worth, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;



- b. describe the ownership structure for Whole Woman's Health of Fort Worth, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Fort Worth, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Fort Worth, LLC.

**RESPONSE:**

**INTERROGATORY NO. 14:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Charlottesville, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Charlottesville, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Charlottesville, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Charlottesville, LLC; and

- d. the title, if any, of the person identified at Whole Woman's Health of Charlottesville, LLC.

**RESPONSE:**

**INTERROGATORY NO. 15:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Twin Cities, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Twin Cities, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Twin Cities, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Twin Cities, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Twin Cities, LLC.

**RESPONSE:**

**INTERROGATORY NO. 16:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Peoria, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Peoria, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Peoria, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Peoria, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Peoria, LLC.

**RESPONSE:**

**INTERROGATORY NO. 17:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Baltimore, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Baltimore,

LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Baltimore, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Baltimore, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Baltimore, LLC.

**RESPONSE:**

**INTERROGATORY NO. 18:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Beaumont, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Beaumont, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;

- b. describe the ownership structure for Whole Woman's Health of Beaumont, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Beaumont, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Beaumont, LLC.

**RESPONSE:**

Respectfully submitted,

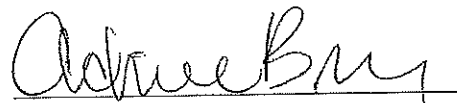


Bart Carroll

Attorney No. 22708-49

Office of Legal Affairs

Indiana State Dept. of Health



Adrienne Brune

Attorney No. 31911-49

Office of Legal Affairs

Indiana State Dept. of Health

**CERTIFICATE OF SERVICE**

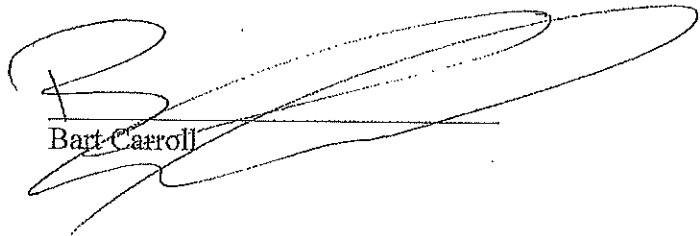
I hereby certify that a copy of the foregoing Indiana State Department of Health's First Set of Interrogatories has been duly served upon counsel of record, listed below, by United States mail, postage prepaid and by e-mail, on this 26<sup>th</sup> day of February, 2018:

John H. Bucy, II  
Bucy & Associates, PLLP  
6633 Highway 290 East, Suite 104  
Austin, TX 78734

Kathrine D. Jack  
JACK LAW OFFICE LLC  
One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140

Stephanie Toti  
Lawyering Project  
25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017

  
Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**INDIANA STATE DEPARTMENT OF HEALTH'S  
FIRST SET OF INTERROGATORIES**

Acute Care Division, Indiana State Department of Health (hereinafter referred to as "ISDH"), by counsel, pursuant to Indiana Trial Rule 33, propounds the following Interrogatories to Whole Woman's Health Alliance (hereinafter referred to as the "Facility"), and requests that it be answered within thirty (30) days and deemed continuing in nature so as to require the Facility to notify the undersigned of any amendment or addition to responses hereto.

**INTERROGATORY NO. 1:** Identify each and every person who is responding to these interrogatories and/or who has provided information upon which such answers are based including:

- a. the name;
- b. the mailing address;
- c. the telephone number;
- d. the position; and

- e. specifically to which interrogatory the named individual(s) provided either the entire response or assistance with the final response.

**RESPONSE:**

**INTERROGATORY NO. 2:** Identify the documents, records, reports, notes, memoranda or materials the Facility, any of its employees or its attorney intends to offer as evidence at the hearing in this cause, including:

- a. the title and date of each such document;
- b. the author of each such document; and
- c. the content of each such document.

**RESPONSE:**

**INTERROGATORY NO. 3:** Identify the witnesses the Facility intends to call at the hearing in this cause and include:

- a. their full name;
- b. their address;
- c. their telephone number;
- d. the name and address of their employer;
- e. their occupation;
- f. their job title; and
- g. a synopsis of their anticipated testimony.

**RESPONSE:**



**INTERROGATORY NO. 4:** For each individual whom the Facility expects to call as an expert witness at the hearing of this matter, state:

- a. his/her name and office address;
- b. his/her area of expertise or specialty;
- c. the subject matter on which he/she is expected to testify;
- d. the substance of the facts and opinions to which he/she is expected to testify;
- and
- e. a summary of the grounds for each such opinion.

**RESPONSE:**

**INTERROGATORY NO. 5:** For the period from January 1, 2016 through December 31, 2017, identify each member of the Board of Directors of Whole Woman's Health Alliance, and for each state the following:

- a. the name, address, and telephone of the person identified;
- b. the title, if any, of the person identified (i.e. President, Secretary, etc.);
- c. the date the person identified joined the Board of Directors; and
- d. the date the person identified vacated the position on the Board of Directors.

**RESPONSE:**

**INTERROGATORY NO. 6:** For each person who has vacated a position on Board of Directors, for any reason, in the period from January 1, 2016 through December 31, 2017, identify the circumstances surrounding their exit from the Board, and state for each person the following:

- a. the reason the person identified no longer serves on the Board of Directors (i.e. resigned, terminated, etc.); and
- b. if succeeded by another person on the Board of Directors, the name of that person.

**RESPONSE:**

**INTERROGATORY NO. 7:** At any time, state whether Whole Woman's Health Alliance had an organizational relationship of any kind with each of the following LLC organizations, including but not limited to a contractual, partner, representative, advocacy, or any other relationship:

- a. Whole Woman's Health, LLC;
- b. Whole Woman's Health of Austin, LLC;
- c. Whole Woman's Health of McAllen, LLC;
- d. Whole Woman's Health of San Antonio, LLC;
- e. Whole Woman's Health of Fort Worth, LLC;
- f. Whole Woman's Health of Charlottesville, LLC;
- g. Whole Woman's Health of the Twin Cities, LLC;
- h. Whole Woman's Health of Peoria, LLC;
- i. Whole Woman's Health of Beaumont, LLC; and
- j. Whole Woman's Health of Baltimore, LLC.

**RESPONSE:**

**INTERROGATORY NO. 8:** For each LLC organization with which Whole Woman's Health Alliance had an organizational relationship as identified in Interrogatory No. 7, state the following for each:

- a. describe in detail the nature of the relationship;
- b. identify each and every document and record of any kind which exists that states the responsibilities and/or duties of Whole Woman's Health Alliance and the LLC organization to one another;
- c. if no document or record exists which states the responsibilities and/or duties of Whole Woman's Health Alliance and the LLC organization to one another, then describe the responsibilities and/or duties in detail;
- d. identify the member of the Board of Directors who acts as the lead liaison between Whole Woman's Health Alliance and the LLC organization; and
- e. identify the member of the Board of Directors who would be the most knowledgeable about the relationship between Whole Woman's Health Alliance and the LLC organization.

**RESPONSE:**

**INTERROGATORY NO. 9:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;

- b. describe the ownership structure for Whole Woman's Health, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health, LLC.

**RESPONSE:**

**INTERROGATORY NO. 10:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Austin, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Austin, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Austin, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Austin, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Austin, LLC.

**RESPONSE:**

**INTERROGATORY NO. 11:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of McAllen, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of McAllen, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of McAllen, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of McAllen, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of McAllen, LLC.

**RESPONSE:**

**INTERROGATORY NO. 12:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner,

and/or affiliate of Whole Woman's Health of San Antonio, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of San Antonio, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of San Antonio, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of San Antonio, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of San Antonio, LLC.

**RESPONSE:**

**INTERROGATORY NO. 13:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Fort Worth, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Fort Worth, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;

- b. describe the ownership structure for Whole Woman's Health of Fort Worth, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Fort Worth, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Fort Worth, LLC.

**RESPONSE:**

**INTERROGATORY NO. 14:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Charlottesville, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Charlottesville, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Charlottesville, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Charlottesville, LLC; and

- d. the title, if any, of the person identified at Whole Woman's Health of Charlottesville, LLC.

**RESPONSE:**

**INTERROGATORY NO. 15:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Twin Cities, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Twin Cities, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Twin Cities, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Twin Cities, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Twin Cities, LLC.

**RESPONSE:**



**INTERROGATORY NO. 16:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Peoria, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Peoria, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Peoria, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Peoria, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Peoria, LLC.

**RESPONSE:**

**INTERROGATORY NO. 17:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Baltimore, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Baltimore,

LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;
- b. describe the ownership structure for Whole Woman's Health of Baltimore, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Baltimore, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Baltimore, LLC.

**RESPONSE:**

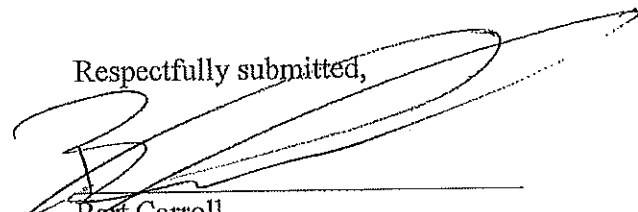
**INTERROGATORY NO. 18:** Identify each person who has served on the Board of Directors of Whole Woman's Health Alliance at any time during the period from January 1, 2016 through December 31, 2017, and the person is also either a member, owner, and/or affiliate of Whole Woman's Health of Beaumont, LLC, and/or a member, owner, and/or affiliate of an organizational member of the Whole Woman's Health of Beaumont, LLC at any level of in the ownership structure, then state the following for each person identified:

- a. whether the membership, ownership, and/or affiliation is by the person or through an organizational ownership;

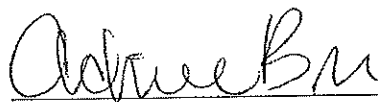
- b. describe the ownership structure for Whole Woman's Health of Beaumont, LLC and how the person on the Board of Directors of Whole Woman's Health Alliance exists in that structure;
- c. whether the person identified participates in the management, operation, and/or decision-making process of any kind for Whole Woman's Health of Beaumont, LLC; and
- d. the title, if any, of the person identified at Whole Woman's Health of Beaumont, LLC.

**RESPONSE:**

Respectfully submitted,



Bart Carroll  
Attorney No. 22708-49  
Office of Legal Affairs  
Indiana State Dept. of Health



Adrienne Brune  
Attorney No. 31911-49  
Office of Legal Affairs  
Indiana State Dept. of Health

**CERTIFICATE OF SERVICE**

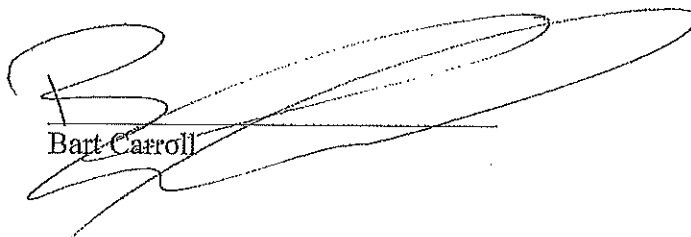
I hereby certify that a copy of the foregoing Indiana State Department of Health's First Set of Interrogatories has been duly served upon counsel of record, listed below, by United States mail, postage prepaid and by e-mail, on this 26<sup>th</sup> day of February, 2018:

John H. Bucy, II  
Bucy & Associates, PLLP  
6633 Highway 290 East, Suite 104  
Austin, TX 78734

Kathrine D. Jack  
JACK LAW OFFICE LLC  
One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140

Stephanie Toti  
Lawyering Project  
25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017

  
Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS  
AND RECORDS TO A NON-PARTY**

To: Whole Woman's Health, LLC  
Amy Hagstrom Miller, Registered Agent  
914 East Jefferson Street, Suite 204  
Charlottesville, VA 22902

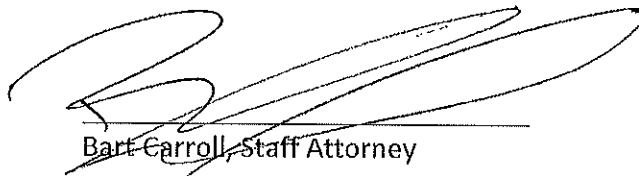
Division of Acute Care, Indiana State Department of Health, by counsel, Bart Carroll, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Trial Rule 34(C), and Ind. Code 16-34 et al., requests that Whole Woman's Health, LLC (hereinafter "Facility") produce for inspection, examination and copying within thirty (30) days after service hereof, to Respondent's attorney, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, or at a time and place convenient to the Facility, copies of all records related to the above matter, including but not limited to the following:

1. Copies of documents and records maintained by the Facility as described below:
  - a. Articles of incorporation, certificates of formation, by-laws, and any other organizational documents and records;
  - b. Documents and records amending the organizational documents and records;
  - c. Operating agreement of Whole Woman's Health, LLC;

- d. Any and all meeting minutes of Whole Woman's Health, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
- h. All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws under which any clinic which performs abortions, of any kind, and which is operated by Whole Woman's Health, LLC has been issued.

Pursuant to the Indiana Administrative Orders and Procedures Act and Indiana Trial Rule 34(C), the Respondent serves simultaneously herewith a subpoena duces tecum upon the Facility for the above requested documents and records. You are advised that Indiana Trial Rule 34(C) provides that you are entitled to security against damages resulting from this request and that you may respond to this request by submitting to its terms, by proposing different terms, by objecting to specifically or generally to this request, by serving a written response to the undersigned within thirty-three (33) days of service, or by moving to quash, as permitted by Trial Rule 45(B). The undersigned agrees to reimburse you for the reasonable costs of copying the requested documents, however, if the expected reproduction costs exceed \$50.00, please contact the undersigned for approval before preparing the response.

Respectfully submitted,



Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H

Indianapolis, IN 46204  
Telephone: (317) 233-7766

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this 26<sup>th</sup> day of February, 2018:

John H. Bucy, II  
Bucy & Associates, PLLP  
6633 Highway 290 East, Suite 104  
Austin, TX 78734  
john@johnbucy.com

Kathrine D. Jack  
JACK LAW OFFICE LLC  
One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140  
kjack@jacklawoffice.com

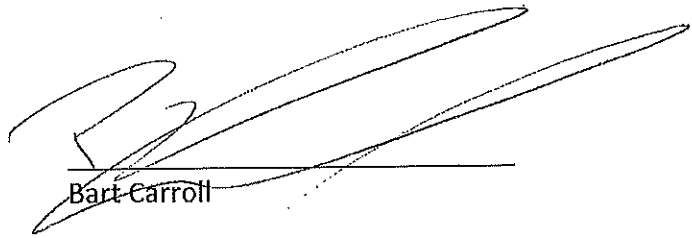
Stephanie Toti  
Lawyering Project  
25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004  
stoti@lawyeringproject.org

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
dsingh@lawyeringproject.org

and, after a period to allow the parties to object, the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

Whole Woman's Health, LLC  
Amy Hagstrom Miller, Registered Agent  
914 East Jefferson Street, Suite 204  
Charlottesville, VA 22902





Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: BEFORE THE INDIANA STATE  
COUNTY OF MARION        ) DEPARTMENT OF HEALTH  
                                  ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,        )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

SUBPOENA DUCES TECUM

To: Whole Woman's Health, LLC  
Amy Hagstrom Miller, Registered Agent  
914 East Jefferson Street, Suite 204  
Charlottesville, VA 22902

YOU ARE HEREBY COMMANDED to produce the documents and records referred to in Respondent's Request for Production of Documents and Records to a Non-Party attached hereto, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, within thirty (30) days from the receipt of the Request for Production of Documents and Records to a Non-Party and Subpoena Duces Tecum.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

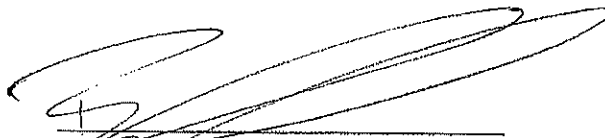
\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



- d. Any and all meeting minutes of Whole Woman's Health of Baltimore, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of Baltimore, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
- h. All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws by Whole Woman's Health of Baltimore, LLC.

Pursuant to the Indiana Administrative Orders and Procedures Act and Indiana Trial Rule 34(C), the Respondent serves simultaneously herewith a subpoena duces tecum upon the Facility for the above requested documents and records. You are advised that Indiana Trial Rule 34(C) provides that you are entitled to security against damages resulting from this request and that you may respond to this request by submitting to its terms, by proposing different terms, by objecting to specifically or generally to this request, by serving a written response to the undersigned within thirty-three (33) days of service, or by moving to quash, as permitted by Trial Rule 45(B). The undersigned agrees to reimburse you for the reasonable costs of copying the requested documents, however, if the expected reproduction costs exceed \$50.00, please contact the undersigned for approval before preparing the response.

Respectfully submitted,



Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this 26<sup>th</sup> day of February, 2018:

John H. Bucy, II  
Bucy & Associates, PLLP  
6633 Highway 290 East, Suite 104  
Austin, TX 78734  
[john@johnbucy.com](mailto:john@johnbucy.com)

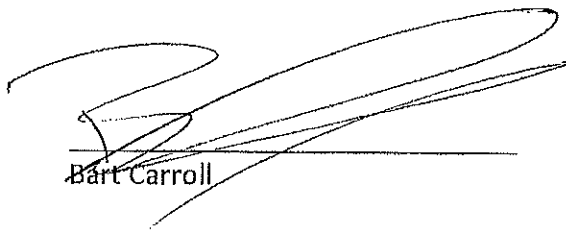
Kathrine D. Jack  
JACK LAW OFFICE LLC  
One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140  
[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)

Stephanie Toti  
Lawyering Project  
25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004  
[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

and, after a period to allow the parties to object, the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

Whole Woman's Health of Baltimore, LLC  
Christina Hayes, Registered Agent  
7648 Belair Road  
Baltimore, MD 21236



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

SUBPOENA DUCES TECUM

To: Whole Woman's Health of Baltimore, LLC  
Christina Hayes, Registered Agent  
7648 Belair Road  
Baltimore, MD 21236

YOU ARE HEREBY COMMANDED to produce the documents and records referred to in Respondent's Request for Production of Documents and Records to a Non-Party attached hereto, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, within thirty (30) days from the receipt of the Request for Production of Documents and Records to a Non-Party and Subpoena Duces Tecum.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766





**WHOLE WOMAN'S HEALTH ALLIANCE** )  
**1812 Centre Creek Drive, Suite 205** )  
**Austin, TX 78754** )  
**Petitioner,** )  
) )  
**vs.** )  
) )  
**INDIANA STATE DEPARTMENT OF HEALTH,** )  
**ACUTE CARE DIVISION,** )  
**Respondent.** )

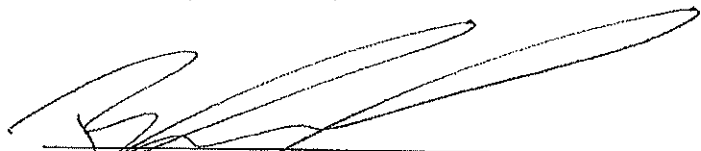
To: Whole Woman's Health of Beaumont, LLC  
Amy Hagstrom Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753

1. Copies of documents and records maintained by the Facility as described below:
  - a. Articles of incorporation, certificates of formation, by-laws, and any other organizational documents and records;
  - b. Documents and records amending the organizational documents and records;
  - c. Operating agreement of Whole Woman's Health of Beaumont, LLC;

- d. Any and all meeting minutes of Whole Woman's Health of Beaumont, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of Beaumont, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
- h. All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws by Whole Woman's Health of Beaumont, LLC.

Pursuant to the Indiana Administrative Orders and Procedures Act and Indiana Trial Rule 34(C), the Respondent serves simultaneously herewith a subpoena duces tecum upon the Facility for the above requested documents and records. You are advised that Indiana Trial Rule 34(C) provides that you are entitled to security against damages resulting from this request and that you may respond to this request by submitting to its terms, by proposing different terms, by objecting to specifically or generally to this request, by serving a written response to the undersigned within thirty-three (33) days of service, or by moving to quash, as permitted by Trial Rule 45(B). The undersigned agrees to reimburse you for the reasonable costs of copying the requested documents, however, if the expected reproduction costs exceed \$50.00, please contact the undersigned for approval before preparing the response.

Respectfully submitted,



Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204

Telephone: (317) 233-7766

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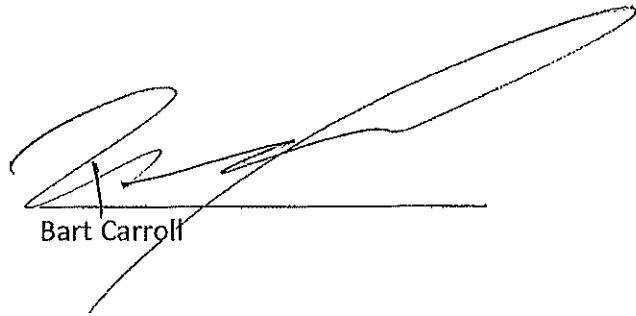
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P.O. Box 813  
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[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)

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Dipti Singh  
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811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

and, after a period to allow the parties to object, the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

Whole Woman's Health of Beaumont, LLC  
Amy Hagstrom Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,        )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

SUBPOENA DUCES TECUM

To: Whole Woman's Health of Beaumont, LLC  
Amy Hagstrom Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753

YOU ARE HEREBY COMMANDED to produce the documents and records referred to in Respondent's Request for Production of Documents and Records to a Non-Party attached hereto, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, within thirty (30) days from the receipt of the Request for Production of Documents and Records to a Non-Party and Subpoena Duces Tecum.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA            )     BEFORE THE INDIANA STATE  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION        )     CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                            )  
                                  Petitioner,        )  
  )  
                                  vs.                    )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS  
AND RECORDS TO A NON-PARTY**

To:    Whole Woman's Health of Fort Worth, LLC  
        Amy Hagstrom Miller, Registered Agent  
        8401 N. Interstate 35, Suite 1A  
        Austin, TX 78753

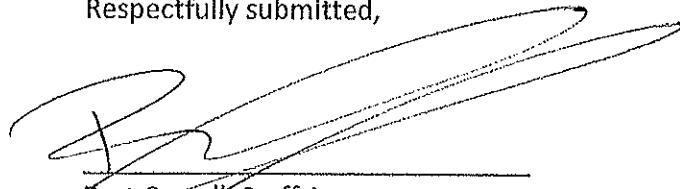
Division of Acute Care, Indiana State Department of Health, by counsel, Bart Carroll, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Trial Rule 34(C), and Ind. Code 16-234 et al., requests that Whole Woman's Health, LLC (hereinafter "Facility") produce for inspection, examination and copying within thirty (30) days after service hereof, to Respondent's attorney, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, or at a time and place convenient to the Facility, copies of all records related to the above matter, including but not limited to the following:

1. Copies of documents and records maintained by the Facility as described below:
  - a. Articles of incorporation, certificates of formation, by-laws, and any other organizational documents and records;
  - b. Documents and records amending the organizational documents and records;
  - c. Operating agreement of Whole Woman's Health of Fort Worth, LLC;

- d. Any and all meeting minutes of Whole Woman's Health of Fort Worth, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of Fort Worth, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
- h. All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws by Whole Woman's Health of Fort Worth, LLC.

Pursuant to the Indiana Administrative Orders and Procedures Act and Indiana Trial Rule 34(C), the Respondent serves simultaneously herewith a subpoena duces tecum upon the Facility for the above requested documents and records. You are advised that Indiana Trial Rule 34(C) provides that you are entitled to security against damages resulting from this request and that you may respond to this request by submitting to its terms, by proposing different terms, by objecting to specifically or generally to this request, by serving a written response to the undersigned within thirty-three (33) days of service, or by moving to quash, as permitted by Trial Rule 45(B). The undersigned agrees to reimburse you for the reasonable costs of copying the requested documents, however, if the expected reproduction costs exceed \$50.00, please contact the undersigned for approval before preparing the response.

Respectfully submitted,



Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



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Austin, TX 78734  
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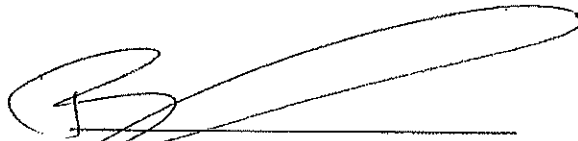
Kathrine D. Jack  
JACK LAW OFFICE LLC  
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P.O. Box 813  
Greenfield, IN 46140  
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Stephanie Toti  
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25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004  
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811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

and, after a period to allow the parties to object, the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

Whole Woman's Health of Fort Worth, LLC  
Amy Hagstrom Miller, Registered Agent  
8401 N. Interstate 35, Suite 1A  
Austin, TX 78753



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: BEFORE THE INDIANA STATE  
COUNTY OF MARION        ) DEPARTMENT OF HEALTH  
                                  ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
  ) Petitioner,  
  )  
  ) vs.  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
  ) Respondent.  
  )

SUBPOENA DUCES TECUM

To: Whole Woman's Health of Fort Worth, LLC  
Amy Hagstrom Miller, Registered Agent  
8401 N. Interstate 35, Suite 1A  
Austin, TX 78753

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
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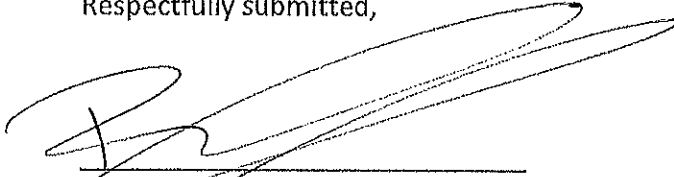




- d. Any and all meeting minutes of Whole Woman's Health of Fort Worth, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
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Respectfully submitted,

  
Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
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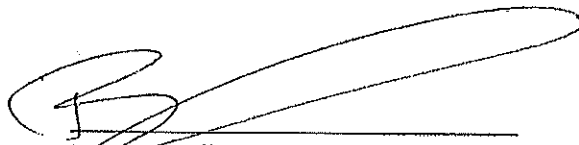
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811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
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Whole Woman's Health of Fort Worth, LLC  
Amy Hagstrom Miller, Registered Agent  
8401 N. Interstate 35, Suite 1A  
Austin, TX 78753



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



STATE OF INDIANA        )  
                                  ) SS: BEFORE THE INDIANA STATE  
COUNTY OF MARION        ) DEPARTMENT OF HEALTH  
                                  ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
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  ) Petitioner,  
  )  
  ) vs.  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
  ) Respondent.  
  )

SUBPOENA DUCES TECUM

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          Amy Hagstrom Miller, Registered Agent  
          8401 N. Interstate 35, Suite 1A  
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Bart Carroll, Atty. No. 22708-49  
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Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
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INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS**  
**AND RECORDS TO A NON-PARTY**

To: Whole Woman's Health of McAllen, LLC  
Amy Hagstrom-Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753

Division of Acute Care, Indiana State Department of Health, by counsel, Bart Carroll, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Trial Rule 34(C), and Ind. Code 16-234 et al., requests that Whole Woman's Health, LLC (hereinafter "Facility") produce for inspection, examination and copying within thirty (30) days after service hereof, to Respondent's attorney, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, or at a time and place convenient to the Facility, copies of all records related to the above matter, including but not limited to the following:

1. Copies of documents and records maintained by the Facility as described below:
  - a. Articles of incorporation, certificates of formation, by-laws, and any other organizational documents and records;
  - b. Documents and records amending the organizational documents and records;
  - c. Operating agreement of Whole Woman's Health of McAllen, LLC;

- d. Any and all meeting minutes of Whole Woman's Health of McAllen, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of McAllen, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
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Respectfully submitted,

  
Bart Carroll, Staff Attorney

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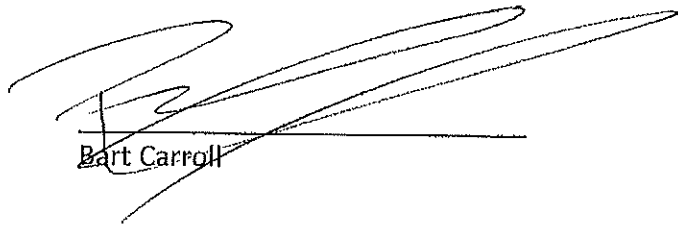
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One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140  
[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)

Stephanie Toti  
Lawyering Project  
25 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004  
[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

and, after a period to allow the parties to object, the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

Whole Woman's Health of McAllen, LLC  
Amy Hagstrom-Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

SUBPOENA DUCES TECUM

To: Whole Woman's Health of McAllen, LLC  
Amy Hagstrom-Miller, Registered Agent  
8401 North IH 35, Ste. 1A  
Austin, TX 78753

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766





STATE OF INDIANA        )  
                                  ) SS: BEFORE THE INDIANA STATE  
COUNTY OF MARION        ) DEPARTMENT OF HEALTH  
                                  ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
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                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,        )  
ACUTE CARE DIVISION,                        )  
                                  Respondent.        )

**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS  
AND RECORDS TO A NON-PARTY**

To:    Whole Woman's Health of Peoria, LLC  
        Sharon Lau, Registered Agent  
        7405 N. University St., Ste. D  
        Peoria, IL 61614

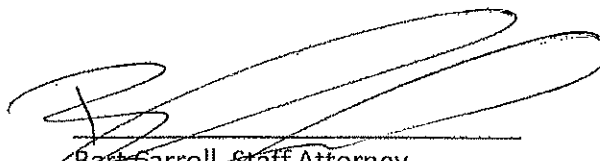
Division of Acute Care, Indiana State Department of Health, by counsel, Bart Carroll, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Trial Rule 34(C), and Ind. Code 16-234 et al., requests that Whole Woman's Health, LLC (hereinafter "Facility") produce for inspection, examination and copying within thirty (30) days after service hereof, to Respondent's attorney, at the Office of Legal Affairs, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204, or at a time and place convenient to the Facility, copies of all records related to the above matter, including but not limited to the following:

1. Copies of documents and records maintained by the Facility as described below:
  - a. Articles of incorporation, certificates of formation, by-laws, and any other organizational documents and records;
  - b. Documents and records amending the organizational documents and records;
  - c. Operating agreement of Whole Woman's Health of Peoria, LLC;

- d. Any and all meeting minutes of Whole Woman's Health of Peoria, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of Peoria, LLC;
- f. All organizational charts for the period from January 1, 2016 through December 31, 2017;
- g. All documentation indicating any and all changes in the LLC membership for the period from January 1, 2016 through December 31, 2017; and
- h. All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws by Whole Woman's Health of Peoria, LLC.

Pursuant to the Indiana Administrative Orders and Procedures Act and Indiana Trial Rule 34(C), the Respondent serves simultaneously herewith a subpoena duces tecum upon the Facility for the above requested documents and records. You are advised that Indiana Trial Rule 34(C) provides that you are entitled to security against damages resulting from this request and that you may respond to this request by submitting to its terms, by proposing different terms, by objecting to specifically or generally to this request, by serving a written response to the undersigned within thirty-three (33) days of service, or by moving to quash, as permitted by Trial Rule 45(B). The undersigned agrees to reimburse you for the reasonable costs of copying the requested documents, however, if the expected reproduction costs exceed \$50.00, please contact the undersigned for approval before preparing the response.

Respectfully submitted,



Bart Garroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been duly served upon the persons listed below, by United States mail, postage prepaid and by e-mail, on this 26<sup>th</sup> day of February, 2018:

John H. Bucy, II  
Bucy & Associates, PLLP  
6633 Highway 290 East, Suite 104  
Austin, TX 78734  
[john@johnbucy.com](mailto:john@johnbucy.com)

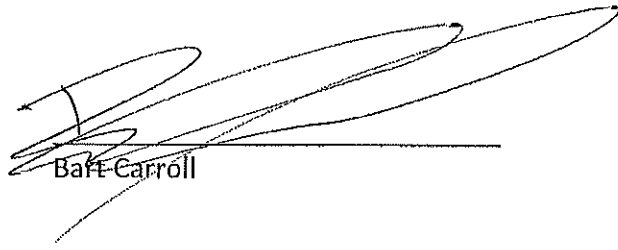
Kathrine D. Jack  
JACK LAW OFFICE LLC  
One Courthouse Plaza  
P.O. Box 813  
Greenfield, IN 46140  
[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)

Stephanie Toti  
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New York, NY 10004  
[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)

Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
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Sharon Lau, Registered Agent  
7405 N. University St., Ste. D  
Peoria, IL 61614



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: DEPARTMENT OF HEALTH  
COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205       )  
Austin, TX 78754                         )  
                                  Petitioner,        )  
  )  
                                  vs.                        )  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,   )  
ACUTE CARE DIVISION,                    )  
                                  Respondent.        )

SUBPOENA DUCES TECUM

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Sharon Lau, Registered Agent  
7405 N. University St., Ste. D  
Peoria, IL 61614

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



STATE OF INDIANA        )  
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COUNTY OF MARION     ) CAUSE NO. ACL-000132-18

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INDIANA STATE DEPARTMENT OF HEALTH,    )  
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**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS  
AND RECORDS TO A NON-PARTY**

To: Whole Woman's Health of San Antonio, LLC  
Amy Hagstrom-Miller, Registered Agent  
8401 North I-35, Suite 1A  
Austin, TX 78753

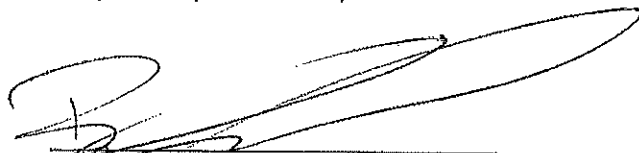
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  - c. Operating agreement of Whole Woman's Health of San Antonio, LLC;

- d. Any and all meeting minutes of Whole Woman's Health of San Antonio, LLC's Board of Directors, but if there is not a Board of Directors, then any and all meeting minutes of its managers or other employees;
- e. Any and all documents which name all of the members of Whole Woman's Health of San Antonio, LLC;
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Respectfully submitted,



Bart Carroll, Staff Attorney

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



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[john@johnbucy.com](mailto:john@johnbucy.com)

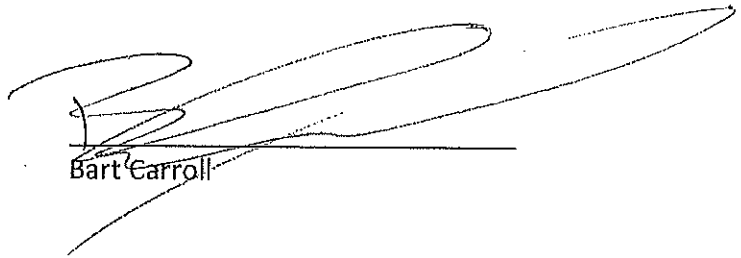
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Amy Hagstrom-Miller, Registered Agent  
8401 North I-35, Suite 1A  
Austin, TX 78753



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766

STATE OF INDIANA        )  
                                  ) SS: BEFORE THE INDIANA STATE  
COUNTY OF MARION        ) DEPARTMENT OF HEALTH  
                                  ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )

Petitioner,                                )

vs.    )

INDIANA STATE DEPARTMENT OF HEALTH,        )  
ACUTE CARE DIVISION,                                )

Respondent.                                )

SUBPOENA DUCES TECUM

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Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



STATE OF INDIANA	)	BEFORE THE INDIANA STATE
	) SS:	DEPARTMENT OF HEALTH
COUNTY OF MARION	)	CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE	)
1812 Centre Creek Drive, Suite 205	)
Austin, TX 78754	)
Petitioner,	)
	)
vs.	)
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INDIANA STATE DEPARTMENT OF HEALTH,	)
ACUTE CARE DIVISION,	)
Respondent.	)

**RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS  
AND RECORDS TO A NON-PARTY**

To: Whole Woman's Health of the Twin Cities, LLC  
 Mary J. Frank, Registered Agent  
 33 South 5<sup>th</sup> Street  
 Minneapolis, MN 55402

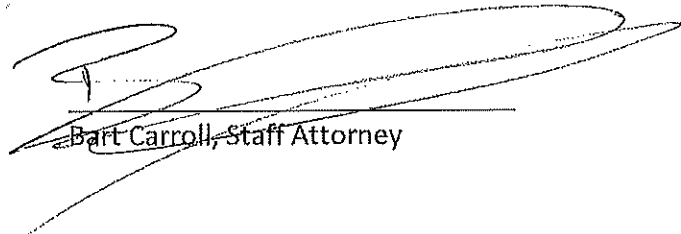
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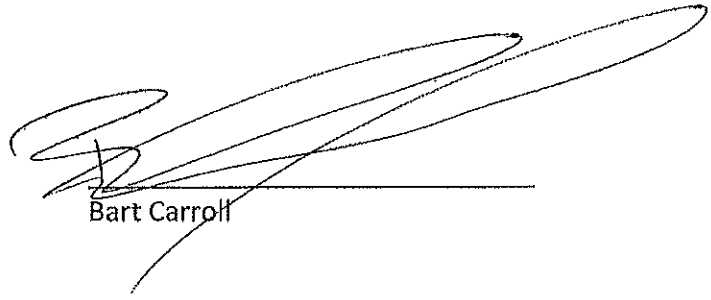
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New York, NY 10004  
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Dipti Singh  
Lawyering Project  
811 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
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Mary J. Frank, Registered Agent  
33 South 5<sup>th</sup> Street  
Minneapolis, MN 55402



Bart Carroll

Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian, Suite 3-H  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



STATE OF INDIANA        )  
                                  ) SS: BEFORE THE INDIANA STATE  
COUNTY OF MARION    ) DEPARTMENT OF HEALTH  
                                  ) CAUSE NO. ACL-000132-18

WHOLE WOMAN'S HEALTH ALLIANCE        )  
1812 Centre Creek Drive, Suite 205        )  
Austin, TX 78754                                )  
  ) Petitioner,  
  )  
  ) vs.  
  )  
INDIANA STATE DEPARTMENT OF HEALTH,    )  
ACUTE CARE DIVISION,                        )  
  ) Respondent.  
  )

SUBPOENA DUCES TECUM

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Mary J. Frank, Registered Agent  
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bart Carroll, Atty. No. 22708-49  
Indiana State Department of Health  
Office of Legal Affairs  
2 North Meridian  
Indianapolis, IN 46204  
Telephone: (317) 233-7766



## Brune, Adrienne

---

**From:** Dipti Singh <dsingh@lawyeringproject.org>  
**Sent:** Thursday, May 03, 2018 3:20 PM  
**To:** Brune, Adrienne; Carroll, Bart  
**Cc:** Kathrine D. Jack, Jack Law Office LLC; Stephanie Toti  
**Subject:** Whole Woman's Health Alliance v. Indiana State Department of Health, Cause No. ACL-000132-18

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

---

Dear Adrienne and Bart,

WWHA would like to amend the clinic administrator listed on its Application. Specifically, WWHHA would like to substitute Sharon Lau for Liam Morley. Could we do this on behalf of WWHHA by sending an email to you or is there a more formal process that WWHHA would need to follow? Please let us know if you prefer to discuss by phone.

Thanks very much.

Sincerely,

---

**Dipti Singh\***

*(Pronouns: she, her)*

Senior Counsel & Strategy Director

Lawyering Project

811 W. 7th St., 12th floor

Los Angeles, CA 90017

Phone: (646) 480-8973

Fax: (646) 480-8828

[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)

\*Licensed in California

*CONFIDENTIALITY NOTICE: This email transmission and any documents, files or previous email messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.*



**Lee, John**

---

**From:** John Bucy <john@johnbucy.com>  
**Sent:** Friday, October 06, 2017 4:40 PM  
**To:** Lee, John  
**Subject:** Re: Facility Application  
**Attachments:** Revised SB Clinic Application 8-1-17.pdf; Certificate of Authority.pdf

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

---

John,

As we discussed over the telephone, the revised Application is attached. I have also included the copy of the registration with the Indiana Secretary of State. The application has also been sent by FedEx. The improvements for the facility have not been completed. The facility should be ready for the Preoccupancy Survey any time after November 5, 2017.

Please call or email with any questions or if you need any additional information.

Thank you for your assistance in this matter.

Sincerely,

John Bucy

Bucy & Muse, PLLC  
6633 Hwy. 290 East, Suite 104  
Austin, Texas 78723  
Telephone: (512) 291-6505  
Facsimile: (512) 291-6558  
Email: [john@johnbucy.com](mailto:john@johnbucy.com)

---

**From:** "Jlee@isdh.IN.gov" <Jlee@isdh.IN.gov>  
**Date:** Thursday, September 21, 2017 at 9:46 AM  
**To:** "john@johnbucy.com" <john@johnbucy.com>  
**Subject:** RE: Facility Application

Mr. Bucy,  
Review of the application packet submitted lacked the date of when the facility was wanting to open as a licensed abortion clinic.

**John Lee, RN, MBA**  
*Nurse Surveyor Supervisor*  
*Program Director Hospitals/ASCs*

Acute Care  
Indiana State Department of Health  
317.233.7487 office  
317.233.7157 fax  
[jlee@isdh.in.gov](mailto:jlee@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)





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This message and any attachments may be confidential. If you are not the intended recipient, please 1) notify me immediately; 2) do not forward the message or attachment; 3) do not print the message or attachment; and 4) erase the message and attachment from your system.

**From:** Lee, John  
**Sent:** Friday, September 08, 2017 11:32 AM  
**To:** 'john@johnbucy.com' <john@johnbucy.com>  
**Subject:** Facility Application

Mr. Bucy,

An application was received by ISDH on 08-11-17. A fire inspection report by either the state or local fire inspector needs provided. Would also need a copy of the approval from the Indiana Homeland Security office. Would also, need written notice when the facility is ready for its Preoccupancy survey so the survey can be scheduled.

**John Lee, RN, MBA**  
*Nurse Surveyor Supervisor*  
*Program Director Hospitals/ASCs*

*Acute Care*  
*Indiana State Department of Health*  
317.233.7487 office  
317.233.7157 fax  
[jlee@isdh.in.gov](mailto:jlee@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**APPLICATION FOR LICENSE  
TO OPERATE AN ABORTION CLINIC**

State Form 52233 (R3 / 3-14)  
Approved by State Board of Accounts, 2014  
Indiana State Department of Health-Division of Acute Care  
(Pursuant to IC 16-21-2 and 410 IAC 26)

**Division of Acute Care Use Only**

Date Received (mm/dd/yyyy) \_\_\_\_\_ Date Approved (mm/dd/yyyy) \_\_\_\_\_ Date Rejected (mm/dd/yyyy) \_\_\_\_\_

*Please Type or Print Legibly.*

**SECTION I - TYPE OF APPLICATION**

Application (Check appropriate item.)

☒ New Facility ☐ Renewal

☐ Change of Ownership (Anticipated date of Sale/Purchase/Lease (mm/dd/yyyy)) \_\_\_\_\_  
Submit a dated and signed copy of the bill of sale, lease or other document of transfer.

**SECTION II - IDENTIFYING INFORMATION**

**A. Abortion Clinic Location**

Name of Abortion Clinic

Whole Woman's Health Alliance

Street Address (number and street)

3511 Lincoln Way West

P.O. Box

City

County

ZIP Code +4

South Bend

St. Joseph

46628-1411

Telephone Number

Fax Number

( )

( )

Abortion Clinic e-mail address: \_\_\_\_\_

Internet Web Address: \_\_\_\_\_

**B. Mailing Address (if different from abortion clinic location)**

Street Address (number and street)

P.O. Box

City

County

ZIP Code +4

**C. Licensee/Ownership Information**

Licensee: The applicant entity as registered with the secretary of state

Whole Woman's Health Alliance

Street Address (number and street)

1812 Centre Creek Drive, Suite 205

P.O. Box

City

State

ZIP Code+4

Austin

Texas

78754

Telephone Number

Fax Number

EIN Number

Fiscal Year End Date (mm/dd)

( 512 ) 835-8858

( 512 ) 835-8568

46-5318393

12/31



**D. Services provided under this license:**

Code items 1 and 2 as follows: 1. Provided directly by employee(s), 2. Provided by a contract service, 3. Both 1 and 2.

1. Ancillary Services: ☐ Laboratory: CLIA Certificate Number \_\_\_\_\_ ☐ Radiology ☐ Counseling  
☒ 1 Family Planning ☐ Pharmacy ☐ Other (List): \_\_\_\_\_

2. Surgical Services: ☐ Gynecology ☐ Other (List): \_\_\_\_\_

For item 3, indicate the total number of individuals (employees plus contractors) working in this clinic. This includes hourly, part-time, and full-time persons.

3. Staffing: Physicians: ☒ 1 Registered Nurses: ☐ Licensed Practical Nurses: ☐

Licensed Social Workers: ☐ Other (List title and number): 1ACP

**E. Number of Procedure Rooms Utilizing:**

Local analgesia/anesthetic ☒ 0

Moderate/Conscious Sedation ☒ 0

**F. Type of Entity:**

For Profit

- ☐ Individual
- ☐ Partnership
- ☐ Corporation
- ☐ Limited Liability Company
- ☐ Sole Proprietorship
- ☐ Other (specify) \_\_\_\_\_

Non-Profit

- ☐ Church Related
- ☐ Individual
- ☐ Partnership
- ☒ Corporation
- ☐ Limited Liability Company
- ☐ Other (specify) \_\_\_\_\_

Government

- ☐ State
- ☐ County
- ☐ City
- ☐ City/County
- ☐ Hospital District
- ☐ Federal
- ☐ Other (specify) \_\_\_\_\_



**G. Officers (If the business entity is incorporated)**

Position	Name	Address/Phone/Fax/ZIP
President/Chairman/CEO	AMY HANSEN	1412 Centre Street, Dr. Suite 100, Austin, TX 78704
Vice President/Vice Chairman/COO	N/A	
Treasurer/CFO	Dianna Todd	1412 Centre Street, Dr. Suite 100, Austin, TX 78704
Secretary	John H. Guy II	1412 Centre Street, Dr. Suite 100, Austin, TX 78704

**H. Ownership and Control Details**

List all persons who own or control the business entity, including the name, address, and percentage of ownership. If the business entity is a partnership, list all partners and their respective ownership percentages. If the business entity is a limited liability company, list all members and their respective ownership percentages. If the business entity is a corporation, list all shareholders and their respective ownership percentages.

Name	Business Address/Phone/Fax/ZIP	Percentage
N/A		

The undersigned hereby certifies that the information provided in this application is true and correct to the best of their knowledge and belief, and that they are not aware of any information that would make this information false or misleading.

I certify that the information provided in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any information that would make this information false or misleading.

Signature of the Medical Director	<i>Jeffrey D. Guy</i>
Printed Name and Title	Jeffrey D. Guy M.D. Med Dir
Date of Signature (month/year)	07/25/2017
Signature of the State Administrator	
Printed Name and Title	
Date of Signature (month/year)	

**See the following page for instructions regarding licensure fees and submission of this application.**



**G. Officers (if the business entity is incorporated)**

Position	Name	Address/City/State/ZIP
President/Chairperson/CEO	Amy Hogstrom Miller	1812 Centre Creek Drive, Suite 205, Austin, Texas, 78754
Vice-President/Vice-Chairperson/COO	N/A	
Treasurer/CFO	Bronde Tolbert	1812 Centre Creek Drive, Suite 205, Austin, Texas, 78754
Secretary	John H. Bucy II	1812 Centre Creek Drive, Suite 205, Austin, Texas, 78754

**H. Ownership and/or Change in Ownership:**

List names and addresses of individuals or organizations having direct or indirect ownership or controlling interest of five percent (5%) in the applicant entity. Indirect ownership interest is an entity that has an ownership interest in the applicant entity. Ownership in any entity higher in a pyramid than the applicant constitutes indirect ownership. (Use additional sheet if necessary.)

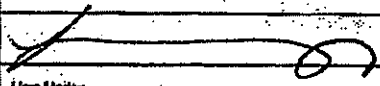
Name	Business Address/City/State/ZIP	EIN Number
N/A		

**CERTIFICATION OF APPLICATION**

The undersigned hereby makes application for a license to operate an Abortion Clinic (Clinic) in the State of Indiana, and in support of this application, represents and shows that the owner(s) and operator(s) are of reputable and reasonable character, are able to comply with the Abortion Clinic statutes, IC 16-21-2-2.5 and IC 16-34, and the rules promulgated there under, 410 IAC 26 and will operate and maintain this clinic in accordance with those rules.

I certify that the operational policies of the clinic will not provide for discrimination based upon race, color, creed, or national origin.

I swear and affirm under the penalty of perjury that all statements made in this application and any attachments thereto are correct and complete and that I will comply with all regulations, laws, and rules governing the licensing of clinics in Indiana.

Signature of the Medical Director:	
Printed Name and Title:	Jeffrey D. Glantz, MD Dr
Date of Signature (mm/dd/yyyy):	07/28/2017
Signature of the Clinic Administrator:	
Printed Name and Title:	Liam Morley
Date of Signature (mm/dd/yyyy):	10/02/2017

**See the following page for instructions regarding licensure fees and submission of this application.**





### License Fee

Select the appropriate fee based upon the total number of first trimester procedures as reported to the Indiana State Department of Health (ISDH) on the Terminated Pregnancy Report (State Form 36526).

Check One	Total First Trimester Procedures in the Clinic	Fee
✓	Zero to 799	\$500.00
	800 to 3,499	\$1,000.00
	3,500 to 6,999	\$2,000.00
	7,000 and above	\$3,000.00

Indiana Hospital Council; 414 IAC 1-1-3

**Enclose the following:**

- 1. A completed Application for License to Operate an Abortion Clinic (this form).**
- 2. Any supporting attachments.**
- 3. For each physician performing procedures, either:**
  - (A) A copy (in writing) of the physician's admitting privileges; or**
  - (B) A copy of:**
    - (1) his/her written agreement with another physician with admitting privileges; and**
    - (2) a copy (in writing) of that physician's admitting privileges.**
- 4. Payment made payable to "Indiana State Department of Health."**

**Mail to:**

**INDIANA STATE DEPARTMENT OF HEALTH  
CASHIER'S OFFICE  
P. O. BOX 7236  
INDIANAPOLIS, INDIANA 46207-7236**



July 5, 2017

, DO

Dear :

I am pleased to inform you that on the Board of Trustees approved your reappointment to the effective . If you requested a change in your delineation of privileges, a new copy of the privileges for which you were approved will be attached.

Please remember that 50 hours of continuing medical education activities relevant to the privileges granted are a requirement for practitioners with delineated clinical privileges. For the next reappointment period, credits will be accepted from continuing medical education activities held during the dates indicated above.

Your continued confidence and support of our Hospital is appreciated by the entire . Please always feel free to bring matters you deem important to the attention of any one of us on the management staff. I can assure you that we will act promptly to address your concerns and/or ideas in order to ensure that the highest quality of care and services are provided to your patients.

If you have any questions regarding your reappointment, please don't hesitate to call

Sincerely,

---



**Whole Woman's Health Alliance**  
**Whole Woman's Health of South Bend**  
3511 Lincoln Way West  
South Bend, IN 46628

**Emergency Services Agreement**

This agreement between \_\_\_\_\_ and \_\_\_\_\_, offers medical transfer services for Whole Woman's Health of South Bend in accordance with Ind. Code Ann. 516-34-2-4.5.

\_\_\_\_\_ agrees to accept referrals from \_\_\_\_\_ for patients who may require evaluation, treatment, or follow up care from any complications from services provided at Whole Woman's Health of South Bend. \_\_\_\_\_ affirms that \_\_\_\_\_ currently has privileges at a hospital in St. Joseph's County or a county contiguous thereto.

07-25-17  
Date



# Bucy & Associates, PLLC

6633 Highway 290 East, Suite 104  
Austin, Texas 78723  
Phone: (512) 291-6505  
Fax: (512) 291-6558  
E-Mail: john@johnbucy.com

August 1, 2017

Jerome M. Adams, MD, MPH  
State Health Commissioner  
Indiana State Department of Health  
2 North Meridian Street  
Indianapolis, Indiana 46204

Dear Dr. Adams,

Whole Woman's Health Alliance, a 501c3 nonprofit organization is submitting an abortion clinic licensing application to the Indiana State Department of Health ("ISDH") for a clinic to be located at 3511 Lincoln Way West, South Bend, Indiana 46628. Our clinic on Lincoln Way West will not provide surgical abortions, but rather will only offer women the option of a non-surgical (medication) abortion using the medication mifepristone.

Ind. Code 16-21-1-9 states that the State Health Commissioner may grant a waiver of a rule for good cause shown, and if the granting of the waiver "will not adversely affect or increase any risk to the health, safety or welfare of existing or potential residents or patients". In connection therewith, and pursuant to IC 16-21-1-9, Whole Woman's Health South Bend requests a waiver of certain abortion licensing requirements itemized below; we respectfully submit that the waiver should be granted, as it will not adversely affect or increase any risk to the health, safety or welfare of existing or potential residents or patients. We also respectfully note that Planned Parenthood of Indiana and Kentucky has previously received a waiver of each of the requirements listed below from the State Health Commissioner for its clinic in Lafayette, based on the same rationale explained below.

As stated above, we will not offer surgical abortions, only non-surgical (medication) abortions, in compliance with all applicable Indiana regulations including the waiting period. Our patients will come to our clinic, take the medication in the presence of a physician, and then leave the clinic shortly after. Another medication is taken by the patient at home, one to two days later, after which the patient is scheduled for a follow up appointment to confirm that the pregnancy is terminated. As there is no surgery, or any procedure at all, performed in connection with a medication abortion, the waiver of the rules itemized below will have no adverse effect or increase in risk to the health, safety or welfare of our patients.

We respectfully request that the State Health Commissioner waive the following rules:





<u>RULE</u>	<u>RATIONALE</u>
410 IAC 26-10-1(b)(5): Observation during Recovery Period	There is no recovery period necessary in the provisions of a non-surgical abortion, since there is no surgery from which to recover.
410 IAC 26-11-2(a): Sterilization of Equipment and Supplies  410 IAC 26-11-3 Laundry	Non-surgical abortions will be performed by medication, not surgery; no sterile equipment or supplies are required in order to give patient an oral medication.  The clinic will use disposable linens and therefore there is no need for the laundry processing requirements to apply.
410 IAC 26-13-1 Anesthesia	No anesthesia is used and therefore there is no need for the listed anesthesia services.
410 IAC 26-13-3(b) and (c) Anesthesia and Surgical Services: emergency equipment and supplies	There is no procedure performed and no procedure room; there is no recovery needed and no recovery room. Therefore, there is no need for the itemized emergency supplies.
410 IAC 26-17-2( c)(3): Toilet Room	The clinic does not have a separate restroom (toilet and hand washing station) in the waiting room. However, there is a patient restroom (toilet and hand washing station) that will also be available to visitors in the waiting room.
410 IAC 26-17-2( c)(4) Drinking Fountain	The clinic does not have a water fountain. However, we will provide a water cooler and/or bottled water to patients and visitors.
410 IAC 26-17-2(d)(1) Physical Plant Standards: procedure room size and traffic flow	As noted above, there is no procedure performed and no procedure room used for a non-surgical abortion. Medications may be dispensed in an examination room, which may be less than 120

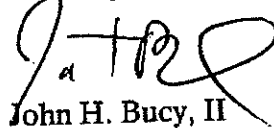


Mr. Adams  
August 1, 2017  
Page 3 of 3

	square feet. There is no need for procedure rooms to be segregated/ removal from traffic flow as there are no such rooms.
410 IAC 26-17-2(d)(2) Hand Washing Station in Procedure Room	As noted above, there are no procedure rooms. Hand washing stations are available in the patient restroom.
410 IAC 26-17-2(d)(3) Scrub Facilities	As noted above, there are no procedures performed for non-surgical abortions, and no procedure rooms. Therefore, scrub facilities are not required near procedure rooms.
410 IAC 26-17-2(d)(4) Recovery Area/ Rooms	As noted above, there is no procedure performed in a non-surgical abortion and therefore no need for a recovery area or recovery rooms.
410 IAC 26-17-2(d)(6) Toilets	As described above, there is a patient restroom (toilet and hand washing facilities) in the clinic area, available for use by patients as well as visitors in the waiting area.

We appreciate your timely consideration of our request, and we await your response. If you have any questions, please do not hesitate to contact me at (512) 291-6505 or [john@johnbucy.com](mailto:john@johnbucy.com).

Sincerely,



John H. Bucy, II

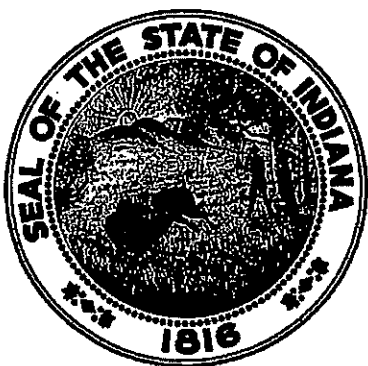


State of Indiana  
Office of the Secretary of State

Certificate of Authority  
of  
**WHOLE WOMAN'S HEALTH ALLIANCE, INC.**

I, CONNIE LAWSON, Secretary of State, hereby certify that an Application for Certificate of Authority of the above Foreign Nonprofit Corporation has been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Nonprofit Corporation Act of 1991.

NOW, THEREFORE, with this document I certify that said transaction will become effective Tuesday, March 28, 2017.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, March 29, 2017

*Connie Lawson*

CONNIE LAWSON  
SECRETARY OF STATE

201703281188179 / 7561392

To ensure the certificate's validity, go to <https://bsd.sos.in.gov/PublicBusinessSearch>



**Lee, John**

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**From:** John Bucy <john@johnbucy.com>  
**Sent:** Friday, October 13, 2017 1:23 PM  
**To:** Lee, John  
**Subject:** Re: Application Documents

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

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Mr.

Lee,

Thank you for your assistance in this matter.

John

**Bucy & Muse, PLLC**  
6633 Hwy. 290 East, Suite 104  
Austin, Texas 78723  
Telephone: (512) 291-6505  
Facsimile: (512) 291-6558  
Email: [john@johnbucy.com](mailto:john@johnbucy.com)

---

**From:** John Lee <jlee@isdh.IN.gov>  
**Date:** Friday, October 13, 2017 at 10:25 AM  
**To:** John Bucy <john@johnbucy.com>  
**Subject:** Application Documents

Mr. Bucy,

This message is to confirm receipt of the documents you have submitted.

**John Lee, RN, MBA**  
*Deputy Director of Acute Care*

*Acute Care*  
*Indiana State Department of Health*  
317.233.7487 office  
317.233.7157 fax  
[jlee@isdh.in.gov](mailto:jlee@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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the message or attachment; 3) do not print the message or attachment;  
and 4) erase the message and attachment from your system.



**Lee, John**

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**From:** Lee, John  
**Sent:** Friday, October 27, 2017 3:11 PM  
**To:** 'John Bucy'  
**Subject:** WHOLE WOMAN'S HEALTH ALLIANCE, INC

October 27, 2017

Dear Mr. Bucy:

Thank you for the information you have submitted to date regarding Whole Woman's Health Alliance on their application for a license to operate an abortion clinic located at 3511 Lincolnway West, South Bend, Indiana 46628-1411. This letter serves as a request for additional information from Whole Woman's Health Alliance on their application.

Pursuant to authority set forth in 410 IAC 26-2-4 et seq., the Indiana State Department of Health is requesting the below additional information concerning the application prior to conducting further review of the application. This additional information is necessary to ensure Whole Woman's Health Alliance's application conforms to the requirements set forth in IC 16-21-2-11.

Please provide additional information regarding the below items within forty-five (45) days of the date of this letter:

1. Provide a complete ownership structure or description pertaining to the applicant, including, but not limited to, any individuals and/or any parent, affiliate or subsidiary organizations. Please list full legal names and addresses, and for entities, list the type of entity and the state of incorporation/organization.
2. Provide a list of all the abortion and health care facilities currently operated by applicant, including its parent, affiliate or subsidiary organizations.
3. Provide a complete list of personnel (medical or otherwise) who will staff the abortion facility after it opens, including their positions and a description of their job responsibilities.
4. For the three-year period immediately preceding the application date, provide data for the applicant pertaining to the following (and include details about the circumstances, dates, and final action):
  - (a) Any tax liens?
  - (b) Ever defaulted under a lease or been evicted from a building or other property?
  - (c) Any unsatisfied final judgments?
  - (d) Ever been subject to injunctive orders from any court?
  - (e) Any criminal arrests or convictions?
  - (f) Ever been cited for violating any local laws or ordinances, such as building, utility, zoning and safety codes?
  - (g) Any denial, suspension, or revocation of any abortion facility or health care facility licenses?
  - (h) Ever been subject to an administrative adjudication or enforcement action?
  - (i) Any Medicaid or Medicare sanctions or penalties relating to the operation of an abortion facility or health care facility?
  - (j) Ever surrendered a license before its expiration?
  - (k) Any debarment or related action in connection with Medicaid or Medicare?



5. For the three-year period immediately preceding the application date, provide data for the medical director and the facility administrator pertaining to the following, so long as it is related to the provision of care or bears a direct or substantial relationship to the job responsibilities that he/she is to carry out for the applicant (and include details about the circumstances, dates, and final action):
  - (a) Any criminal arrests or convictions?
  - (b) Ever been subject to an administrative adjudication or enforcement action?
  - (c) Any civil judgments?
6. Provide full and complete copies of the articles of incorporation, by-laws, and related organizational documents of the applicant.
7. Provide a list and description of all of the procedures or services that will be provided at the abortion facility after it opens.
8. Provide appropriate evidence (such as an affidavit or corporate resolution) establishing that the medical director and the facility administrator have been duly and properly authorized and empowered to sign the application for and on behalf of the applicant.
9. If the applicant has or will engage an entity (other than an employee of applicant) to manage or operate the abortion facility, provide the full legal name and address of that entity and also list the type of entity as well as its state of incorporation/organization. Also attach a complete copy of the proposed or executed management agreement.
10. If any person or entity can claim liabilities of the applicant or of the facility or service for which the license is requested, provide their full legal name and address, and percent and type of claim (if applicable).
11. Provide any other data or information, of which the applicant is aware or has knowledge, that may indicate that the applicant is not of reputable and responsible character, or that could bear upon the requisite showing in that regard.

Please do not hesitate to contact the Indiana State Department of Health should you need additional clarity on any of the above.

Sincerely,

**John Lee, RN, MBA**  
*Deputy Director of Acute Care*

*Acute Care*  
*Indiana State Department of Health*  
317.233.7487 office  
317.233.7157 fax  
[jlee@isdh.in.gov](mailto:jlee@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**Lee, John**

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**From:** Kristie Amann <kristie@johnbucy.com>  
**Sent:** Friday, December 08, 2017 3:08 PM  
**To:** Lee, John; John H. Bucy, II  
**Subject:** Application Documents  
**Attachments:** Response to John Lee Email Requesting Additional Information 12-8-17.pdf; Job Description (Clinic Manager).pdf; Attachment #1.pdf; Attachment #2.pdf; Attachment #3.pdf

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

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Mr. Lee,

Attached please find the Responses to your email dated October 27, 2017 requesting additional information along with the attachments mentioned in the document. Please let me know if you have any other questions.

--

Regards,

Kristie Amann  
Legal Assistant to  
John H. Bucy, II  
6633 Hwy 290 East  
Suite 104  
Austin, Texas 78723  
Phone: (512) 291-6505  
Fax: (512) 291-6558





Mr. Lee:

We will respond to your requests in the order presented:

**1. Provide a complete ownership structure or description pertaining to the applicant, including, but not limited to, any individuals and/or any parent, affiliate or subsidiary organizations. Please list full legal names and addresses, and for entities, list the type of entity and the state of incorporation/organization.**

**Response:** Whole Woman's Health Alliance ("WWHA") is a Texas nonprofit corporation. It does not have members. Management of the affairs of WWHA is vested in the Board of Directors. Since WWHA is a nonprofit corporation it does not have any owners.

WWHA operates a clinic in Austin, Texas. The address of the clinic is 8401 North IH 35, Suite 200, Austin, Texas 78753. It is licensed as an Abortion Facility by the Texas Department of State Health Services Regulatory Licensing Unit. Its license number is 140013.

WWHA has recently purchased a clinic in the State of Virginia. The clinic address is 2321 Commonwealth Drive, Charlottesville, Virginia, 22901. The license number is AF-0020.

WWHA has entered into a management agreement with Whole Woman's Health, LLC (the "Management Company"). The Management Company will provide certain designated management services to WWHA. The Management Company provides management services to numerous clinics across the United States. The Management Company is a Texas limited liability company.

Some of the Board Members of WWHA are affiliated directly or indirectly with the Management Company, but the majority of the Board Members are independent.

**2. Provide a list of all the abortion and health care facilities currently operated by applicant, including its parent, affiliate or subsidiary organizations.**

**Response:** Please refer to the answer to the first Question.

**3. Provide a complete list of personnel (medical or otherwise) who will staff the abortion facility after it opens, including their positions and a description of their job responsibilities.**

**Response:** (A) ; Physician and Medical Director

Description for Job Responsibilities:  
Duties of Medical Director are as follows:

(a) Supervision of medical services provided at the facility, including; nursing, clinical, and laboratory.



- (b) Supervision of controlled substances – medications/logs.
- (c) Supervise quality assurance by participating in quarterly meetings, random chart reviews, complication and re-suction reviews, and periodic meetings with other facility providers (if needed).
- (d) Provide for or assist in arranging after hours coverage support for WWH staff/nurse on call – for patient problems and possible emergencies.
- (e) Maintain standing orders for routine patient care provided by ancillary staff, nurse triage, routine follow-up visits, pre and post op medications, and related matters.
- (e) Be an available resource for Nurse Practitioner, nursing team and clinic staff for both the Gyn and Abortion Care practice.
- (f) CLIA – function as Laboratory Director. Review CLIA compliance and proficiency testing as required.
- (g) Help the recruit providers for the facility as needed.
- (h) Network within the medical community in the facility's service area.
- (i) Participate in regulatory inspection process, including, but not limited to CLIA and NAF.
- (j) Review services offered, research and recommend new services or changes to protocols, materials, administration, dosing, and similar matters.
- (k) Annual review of facility practice guidelines, procedures and protocols.
- (l) Review crash cart and evaluate facility preparedness for an emergency. Review/triage abnormal lab results.
- (m) Supervise any training programs for physicians or residents such as the Ryan program for abortion training.
- (n) Direct any research projects conducted at our facility.

**Duties of Physician:** The Physician will keep and maintain (or cause to be kept and maintained) in a timely fashion accurate and appropriate records relating to all professional services rendered by the Physician.

- (a) Current license in the State of Indiana to practice medicine
- (b) Current unrestricted federal Drug Enforcement Agency certificate
- (c) Controlled Substances Registration Certificate



- (d) Advanced Cardiac Life Support (ACLS) certificate

The Physician will review and follow all regulations of the Indiana State Department of Health pertinent to Abortion Facility, and review and follow all of the protocols and procedures developed by WWHHA to ensure compliance with the state's regulations.

- (a) The Physician will review and follow all regulations of the Indiana Board of Pharmacy, and any other laws and regulations pertinent to the responsibilities and duties of the Physician under the terms of this Agreement.
- (b) The Physician will review and follow the Clinical and Policy Guidelines of the National Abortion Federation;
- (c) The Physician will in a timely fashion, record (or cause to be recorded), into each patient's medical chart, patient's history and physical, medical findings, test results, diagnosis, and prescribed treatment;
- (d) The Physician will supervise training physicians, mid-level providers (such as Nurse Practitioners, Nurse Midwives, and Physician's Assistants), and ancillary medical staff (such as nurses and medical assistants).
- (e) The Physician is free to exercise the Physician's own professional judgment regarding any particular patient; and
- (f) The Physician will submit to and participate in quality assurance, peer review, risk management, and utilization review programs on behalf of WWHHA pursuant to agreements that WWHHA has with hospitals, institutions, third-party payors, or physicians.
- (g) Review standing orders and all protocols.
- (h) Recommend changes in writing to clinic management team.
- (B) \_\_\_\_\_, Clinic Manager and Facility Administrator

Please see attached job description and responsibilities.

**4. For the three-year period immediately preceding the application date, provide data for the applicant pertaining to the following (and include details about the circumstances, dates, and final action):**

- (a) Any tax liens?

**Response:** None



**(b) Ever defaulted under a lease or been evicted from a building or other property?**

**Response:** No

**(c) Any unsatisfied final judgments?**

**Response:** None

**(d) Ever been subject to injunctive orders from any court?**

**Response:** No

**(e) Any criminal arrests or convictions?**

**Response:** None

**(f) Ever been cited for violating any local laws or ordinances, such as building, utility, zoning and safety codes?**

**Response:** No

**(g) Any denial, suspension, or revocation of any abortion facility or health care facility licenses?**

**Response:** None

**(h) Ever been subject to an administrative adjudication or enforcement action?**

**Response:** No

**(i) Any Medicaid or Medicare sanctions or penalties relating to the operation of an abortion facility or health care facility?**

**Response:** None

**(j) Ever surrendered a license before its expiration?**

**Response:** No

**(k) Any debarment or related action in connection with Medicaid or Medicare?**

**Response:** None

**5. For the three-year period immediately preceding the application date, provide data for the medical director and the facility administrator pertaining to the following, so**





long as it is related to the provision of care or bears a direct or substantial relationship to the job responsibilities that he/she is to carry out for the applicant (and include details about the circumstances, dates, and final action):

(a) Any criminal arrests or convictions?

Response: No

(b) Ever been subject to an administrative adjudication or enforcement action?

Response: No

(c) Any civil judgments?

Response: No

6. Provide full and complete copies of the articles of incorporation, by-laws, and related organizational documents of the applicant.

Response: Attached herewith as attachments are the following: Certificate of Filing, SOS Acknowledgment, Certificate of Formation, Certificate of Filing (Amendment), SOS Acknowledgment (Amendment), Certificate of Amendment, and Bylaws labeled as Attachment #1.

7. Provide a list and description of all of the procedures or services that will be provided at the abortion facility after it opens.

Response: Medication abortions, Plan B, counseling, birth control counseling and prescriptions.

8. Provide appropriate evidence (such as an affidavit or corporate resolution) establishing that the medical director and the facility administrator have been duly and properly authorized and empowered to sign the application for and on behalf of the applicant.

Response: The information is attached as Attachment #2.

9. If the applicant has or will engage an entity (other than an employee of applicant) to manage or operate the abortion facility, provide the full legal name and address of that entity and also list the type of entity as well as its state of incorporation/organization. Also attach a complete copy of the proposed or executed management agreement.

Response: See response to Number 1, and Attachment #3.



**10. If any person or entity can claim liabilities of the applicant or of the facility or service for which the license is requested, provide their full legal name and address, and percent and type of claim (if applicable).**

**Response:** None

**11. Provide any other data or information, of which the applicant is aware or has knowledge, that may indicate that the applicant is not of reputable and responsible character, or that could bear upon the requisite showing in that regard.**

**Response:** None



# Whole Woman's Health

## Job Description

### Clinic Manager

#### Vision

*We are here to change how women experience themselves in the world.  
Women's healthcare is our venue.*

#### Philosophy

*We have a holistic approach to healthcare. We understand that women experience medical issues with their whole selves, often including their families, their religion/beliefs, their history and their dreams. We listen to women, trust women and are here to guide them through their choices.*

#### Mission Statement

*We are women's health care providers specializing in abortion. It is our mission to welcome and treat the whole woman – her head, her heart and her body.*

*We provide education, counseling, informed consent, medical care, and trust. We honor women's hopes, dreams and intentions in all of the care that we provide.*

The Clinic Manager will work directly with the Director of Clinic Services (DCS) to lead the clinic and its staff on a day to day basis. The Clinic Manager is responsible for all office activities, including staffing, supervision, systems development and review, running sessions, coordinating compliance with regulations and building team spirit. S/he will work closely with the Director of Clinic Services and other leadership staff as needed. A Clinic Manager must be respectful, empathetic, and able to maintain a patient-centered atmosphere. He/She must demonstrate a strong commitment and interest in the field of women's health and must be able to inspire others to do good work; not just do all of the work him/herself.

#### Job Requirements:

- 1) BA/BS degree in Business Administration, Management, a health related field, or a licensed nurse is preferred.
- 2) A minimum of 2-3 years in a progressively responsible management roles.
- 3) A minimum of 2 years of experience in healthcare, women's health and/or abortion care preferred.
- 4) Fluency in Spanish is desirable.
- 5) Management skills – proven leadership.
- 6) Discretion and appropriate boundaries, keeps proprietary information confidential, and maintains professional boundaries in relationships with staff.
- 7) Organizational skills – able to develop systems and train staff on them.
- 8) Business skills and savvy.
- 9) Time management.
- 10) Competence using computers, Microsoft Office suite software, web ware, office and medical equipment.
- 11) Experience with medical billing, posting charges, and basic accounting.
- 12) Must be able to work 5 days/week, including Saturdays.

#### Required Continuing Education/Training:

- 1) Certification in Basic Life Support, biannually.
- 2) Training in knowledge of emergency supplies, their inventory, their location in the office, and their use.
- 3) Annual OSHA and personal protective equipment training.



## Whole Woman's Health

- 4) HIPAA training.
- 5) Security updates (FACE, etc).

**Directly responsible to:** Director of Clinic Services

**Physical Requirements:** Must possess the capability to perform any task in the office. Must be able to lift 25 lbs or more, be able to physically move through the clinic unaided, and have excellent visual and hearing acuity.

### Essential functions:

#### 1) Communication

- Attention should be on the patients and staff in the day to day running of the clinic. Strategic noticing, planning and prevention are key.
- Uphold the core values of Whole Woman's Health. Practice open and honest conversation. Remember we hold women to their greatest – this means you, your staff and the women in our care.
- Communicate each day's "vital signs" to the DCS.
- Maintain clear communication and rapport with MDs.
- Understand all WW policies, procedures, protocols
- Communicate regularly with staff – memos, meetings, workshops.

#### 2) Leadership/Supervision

- Walk the talk in all actions and words – be a role model of the WWH mission and vision for the staff and the people in our care.
- Run the TOP and GYN sessions. Be on-site whenever there is a clinic in session.
- Supervise the clinic flow, manage triage and promote efficiency.
- Understand of emergency protocols and responses.
- Maintain an extraordinary working relationship between the front office and clinical staff members building a bridge between the two areas.

#### 3) Administration

- If Clinic Manager meets the requirements as defined by the state licensing requirements, the Clinic manager may either act as the Administrator for DSHS purposes.

#### 4) Staffing

- Responsible for staff scheduling and staff payroll submission.
- Staff hiring, firing, and evaluation (in conjunction with Human Resources).
- New employee orientation and training.
- Maintain local staff and MD personnel files.

#### 5) Customer Service

- Phones are our life-line. Superb phones skills are mandatory.
- Focus must be on making every woman in our care feel important.
- Monitor quality of service throughout the office. Ensure that our philosophies about patient centered care and treating the Whole Woman are maintained in all of our work. The women on our staff and in our care should feel that they matter.
- Focus on practice improvement and quality issues. Note services we may add and discuss ways to improve our care.





## Whole Woman's Health

### 6. Systems management

- \* Be accountable for patient records management.
- \* Manage patient appointment templates, scheduling and follow-up systems.
- \* Be responsible for clinic monies. Must understand clinic cash flow, accounting systems.
- \* Understand quality control and regulatory compliance.
- \* Demonstrate expertise in Risk Management.

### 7. Community Marketing and Public Relations

- \* Work with the Director of Marketing and the Director of Clinic Services to develop and monitor a local outreach plan.
- \* Maintain an awareness of local community issues.
- \* Interact with external physicians, agencies, offices, hospitals, etc. as needed.

### 8. Physical plant

- \* Maintain physical plant and aesthetics of the facility.
- \* Obtain estimates for repair and maintenance services before services are rendered – get "ok" from Director of Operations.
- \* Address problems promptly.

### 9. Inventory Maintenance:

- \* Ensure that the inventory in the office is sufficient.
- \* Keep an eye to cost effectiveness, cost containment. Comparison-shopping is mandatory—be careful of over- and under-stocking.

### 10. Security

- \* Ensure that all security equipment and services are functioning correctly; provide training so that the staff is using it properly.
- \* Serve as the local contact for the alarm company and on-site contact for police.
- \* Understand federal, state, and local regulations regarding signage, protesting, picketing.
- \* Decide which staff are authorized to have keys, alarm codes, access to money or and controlled medications. Supervise staff access.

Clinic Manager:

Date: 6/30/17

Administrator:

Date: 4-17-17





## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Whole Woman's Advocacy Alliance  
File Number: 801965127

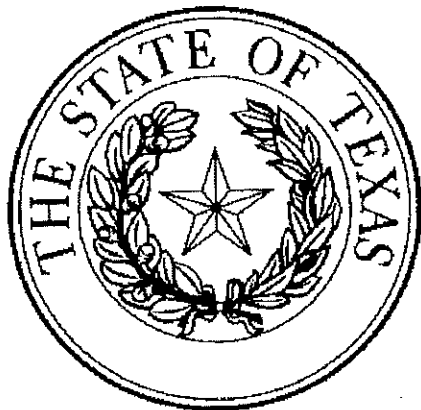
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 04/03/2014

Effective: 04/03/2014



*NANDITA BERRY*

Nandita Berry  
Secretary of State





## Office of the Secretary of State

April 04, 2014

Attn: Kristie Amann

Kristie Amann  
6633 Highway 290 East, Suite 104  
Austin, TX 78723 USA

RE: Whole Woman's Advocacy Alliance  
File Number: 801965127

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created nonprofit corporation.

Nonprofit corporations do not automatically qualify for an exemption from federal and state taxes. Shortly, the Comptroller of Public Accounts will be contacting the corporation at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the corporation. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at <http://window.state.tx.us/taxinfo/exempt/index.html>. Information on exemption from federal taxes is available from the Internal Revenue Service web site at [www.irs.gov](http://www.irs.gov).

Nonprofit corporations do not file annual reports with the Secretary of State, but do file a report not more often than once every four years as requested by the Secretary. It is important for the corporation to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a report when requested may result in the involuntary termination of the corporation. Additionally, a nonprofit corporation will file documents with the Secretary of State if the corporation needs to amend one of the provisions in its certificate of formation. If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555  
Enclosure



Form 202

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee: \$25



**Certificate of Formation  
Nonprofit Corporation**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 801965127 04/03/2014  
Document #: 537509420002  
Image Generated Electronically  
for Web Filing

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Whole Woman's Advocacy Alliance**

**Article 2 - Registered Agent and Registered Office**

☐ A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Amy Hagstrom Miller**

C. The business address of the registered agent and the registered office address is:

Street Address:

**8401 North I-35, Suite 1A Austin TX 78753**

**Consent of Registered Agent**

☐ A. A copy of the consent of registered agent is attached.

OR

☒ B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

☐ A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

☒ B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Amy Hagstrom Miller**

Title: **Director**

Address: **8401 North I-35, Suite 1A Austin TX, USA 78753**

Director 2: **Andrew Stanley**

Title: **Director**

Address: **8401 North I-35, Suite 1A Austin TX, USA 78753**

Director 3: **Brenda Tolbert**

Title: **Director**

Address: **8401 North I-35, Suite 1A Austin TX, USA 78753**

**Article 4 - Organization Structure**

☐ A. The corporation will have members.

or

☒ B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**The purpose is to perform charitable activities with the meaning of Internal Revenue Code Section 501(c)(3) and Texas Tax Code Section 11.18(c), including but not limited to, providing for the organized solicitation and collection for**





distributions through gifts, grants, and agreements to nonprofit charitable, education, religious, and youth organizations that provide direct human, health, and welfare services.

#### Supplemental Provisions / Information

At all times the following shall operate as conditions restricting the operations and activities of the corporation:

No part of the net earnings of the corporation shall inure to any member of the corporation not qualifying as exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, nor to any director or officer of the corporation, nor to any other private persons, excepting solely such reasonable compensation that the corporation shall pay for services actually rendered to the corporation, or allowed by the corporation as a reasonable allowance for authorized expenditures incurred on behalf of the corporation;

No substantial part of the activities of the corporation shall constitute the carrying on of propaganda or otherwise attempting to influence legislation, or any initiative or referendum before the public, and the corporation shall not participate in, or intervene in (including by publication or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office; and

Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended.

The corporation shall not lend any of its assets to any officer or director of this corporation, or guarantee to any person the payment of a loan by an officer or director of this corporation.

[The attached addendum, if any, is incorporated herein by reference.]

**Letter of Consent.pdf**

#### Effectiveness of Filing

☒ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

#### Organizer

The name and address of the organizer are set forth below.

**Law Office of John H. Bucy, II**      **6633 Highway 290 East, Suite 104, Austin, Texas 78723**

#### Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**John H. Bucy, II**

Signature of organizer.







**February 21, 2014**

**Secretary of State of the State of Texas  
P.O. Box 13697  
Austin, TX 78711-3697**

**Re: Consent to Use Similar Name**

**Dear Sir or Madam:**

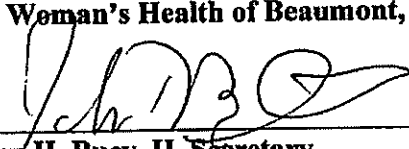
I am the Secretary of Whole Woman's Health of Beaumont, LLC and authorized to act on its behalf. Whole Woman's Health of Beaumont, LLC hereby consents to the use of a similar name by Whole Woman's Advocacy Alliance.

Please call the undersigned if you have any questions or need any additional information.

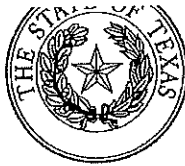
**Sincerely,**

**Whole Woman's Health of Beaumont, LLC**

**By:**

  
**John H. Bucy, II, Secretary**





## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Whole Woman's Health Alliance  
801965127

[formerly: Whole Woman's Advocacy Alliance]

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Amendment for the above named entity has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 08/20/2015

Effective: 08/20/2015



A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.

Carlos H. Cascos  
Secretary of State







## Office of the Secretary of State

August 24, 2015

Attn: Kristie Amann

Kristie Amann  
6633 Highway 290 East, Suite 104  
Austin, TX 78723 USA

-----  
RE: Whole Woman's Health Alliance  
File Number: 801965127

It has been our pleasure to file the Certificate of Amendment for the referenced entity. Enclosed is the certificate evidencing filing. Payment of the filing fee is acknowledged by this letter.

If we may be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555

Enclosure



Form 424

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee: See instructions



**Certificate  
of Amendment**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 801965127 08/20/2015  
Document #: 625692080002  
Image Generated Electronically  
for Web Filing

**Entity Information**

The filing entity is a: **Domestic Nonprofit Corporation**

The name of the filing entity is: **Whole Woman's Advocacy Alliance**

The file number issued to the filing entity by the secretary of state is: **801965127**

**Amendment to Name**

The amendment changes the formation document of the filing entity to change the article or provision that names the entity. The article or provision is amended to read as follows:

The name of the filing entity is:

**Whole Woman's Health Alliance**

A letter of consent, if applicable, is attached. **Form 509.pdf**

**Statement of Approval**

The amendment has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

**Effectiveness of Filing**

☒ A. This document becomes effective when the document is filed by the secretary of state.

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its filing by the secretary of state. The delayed effective date is:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and declares under penalty of perjury that the undersigned is authorized under the Texas Business Organizations Code to execute the filing instrument.

Date: **August 20, 2015**

**John H. Bucy, II, Secretary**

Signature of authorized person

FILING OFFICE COPY



**Form 509**  
**(Revised 06/15)**

Submit with relevant filing  
instrument.

**Filing Fee: None**



**Consent to Use  
of Similar Name**

(1) Whole Woman's Health of Beaumont, LLC

*Name and file number of the entity or individual who holds the existing name on file with the secretary of state*

consents to the use of

(2) Whole Woman's Health Alliance

*Proposed name*

as the name of a filing entity or foreign filing entity in Texas for the purpose of submitting a filing instrument to the secretary of state.

(3) The undersigned certifies to being authorized by the holder of the existing name to give this consent. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: 8/20/15

A handwritten signature in dark ink, appearing to read "John H. Bucy, II".

Signature of Authorized Person

John H. Bucy, II

Name of Authorized Person (type or print)

Secretary

Title of Authorized Person, if any (type or print)

State of Texas

County of Travis

This instrument was acknowledged before me on 8/20/15 by Kristie Lea Amann  
(date) (name of authorized person)



A handwritten signature in dark ink, appearing to read "Kristie Lea Amann".

Notary Public's signature



**BYLAWS  
OF  
WHOLE WOMAN'S ADVOCACY ALLIANCE  
A NONPROFIT CORPORATION**

**PREAMBLE**

These bylaws (the "Bylaws") are subject to, and governed by, the Texas Business Corporation Act and the Articles of Incorporation of Whole Woman's Advocacy Alliance (the "Corporation"). In the event of a direct conflict between the provisions of these Bylaws and the mandatory provisions of the Texas Business Corporation Act or the provisions of the Articles of Incorporation of the Corporation, such provisions of the Texas Business Corporation Act or the Articles of Incorporation of the Corporation, as the case may be, will be controlling.

**ARTICLE ONE: OFFICES**

**1.01. REGISTERED OFFICE AND AGENT.** The registered office and registered agent of the Corporation shall be as designated from time to time by the appropriate filing by the Corporation in the Office of the Secretary of State of Texas.

**1.02. OTHER OFFICES.** The Corporation may also have offices at such other places, both within and without the State of Texas, as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE TWO: BOARD OF DIRECTORS**

**2.01. MANAGEMENT.** The business and property of the Corporation shall be managed by the Board of Directors, and subject to the restrictions imposed by law, the Certificate of Formation, or these Bylaws, the Board of Directors may exercise all the powers of the Corporation.

**2.02. NUMBER; ELECTION; TERM; QUALIFICATION.** The number of Directors will be three, or a number determined by the Board that is not less than three. Each director will serve for a term of three years, or until a successor is duly elected and qualified.

**2.03. NOMINATING DIRECTORS.** At any meeting at which the election of a director is held, a director may nominate a person with the second of any other director.

**2.04. ELECTING DIRECTORS.** A person who meets the qualifications for director and who has been duly nominated may be elected as a director. Directors will be elected by the vote of the Board of the Corporation. A director may be elected to succeed himself or herself as director.

**2.05. VACANCIES.** The Board will fill any vacancy in the Board and any director position to be filled due to an increase in the number of directors. A vacancy is filled by the affirmative vote of a majority of the remaining directors, even if it is less than a quorum of the





Board, or if it is a sole remaining director. A director selected to fill a vacancy will serve for the unexpired term of his or her predecessor in office.

**2.06. ANNUAL MEETING.** The annual meeting of the Board shall be held during each calendar year on such date and at such time as shall be designated from time to time by the Board and stated in the notice of the meeting, if not a legal holiday in the place where the meeting is to be held, and, if a legal holiday in such place, then on the next business day following, at the time specified in the notice of the meeting may be held without notice other than as provided for in these Bylaws.

**2.07. REGULAR MEETINGS.** The Board may provide for regular meetings by resolution stating the time and place of such meetings. The meetings may be held inside or outside Texas, and will be held at the Corporation's registered office in Texas if the resolution does not specify the location of the meetings. No notice of regular Board meetings is required other than a Board resolution stating the time and place of the meetings.

**2.08. SPECIAL MEETINGS.** Special Board meetings may be called by, or at the request of, the president or any two directors. A person or persons authorized to call special meetings of the Board may fix any place within or without Texas as the place for holding a special meeting. The person or persons calling a special meeting will inform the secretary of the corporation of the information to be included in the notice of the meeting. The secretary of the Corporation will give notice to the directors as these Bylaws require.

**2.09. NOTICE.** Written or printed notice of any special meeting of the Board will be delivered to each director not less than seven (7), nor more than thirty (30) days before the date of the meeting. The notice will state the place, day, and time of the meeting; who called the meeting and the purpose or purposes for which it is called.

**2.10. QUORUM.** A majority of the number of directors then in office constitutes a quorum for transacting business at any Board meeting. The directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required for a quorum. If a quorum is never present at any time during a meeting, a majority of the directors present may adjourn and reconvene the meeting once without further notice.

**2.11. DUTIES OF DIRECTORS.** Directors will discharge their duties, including any duties as committee members, in good faith, with ordinary care, and in a manner they reasonably believe to be in the Corporation's best interest. In this context, the term "ordinary care" means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. In discharging any duty imposed or power conferred on directors, directors may, in good faith, rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that has been prepared or presented by a variety of persons, including officers and employees of the Corporation, professional advisors or experts such as accountants or legal counsel. A director is not relying in good faith if he or she has knowledge concerning a matter in question that renders reliance



unwarranted. Directors are not deemed to have the duties of trustees of a trust with respect to the Corporation or with respect to any property held or administered by the Corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

**2.12. DUTY TO AVOID IMPROPER DISTRIBUTIONS.** Directors who vote for or assent to improper distributions are jointly and severally liable to the Corporation for the value of improperly distributed assets, to the extent that, as a result of the improper distribution or distributions, the corporation lacks sufficient assets to pay its debts, obligations, and liabilities. Any distribution made when the Corporation is insolvent, other than in payment of corporate debts, or any distribution that would render the Corporation insolvent, is an improper distribution. A distribution made during liquidation without payment and discharge of or provision for payment and discharge of all known debts, obligations, and liabilities is also improper. Directors present at a Board meeting at which the improper action is taken are presumed to have assented, unless they dissent in writing. The written dissent must be filed with the secretary of the Corporation before adjournment of the meeting in question or mailed to the secretary by registered mail immediately after adjournment. A director is not liable if, in voting for or assenting to a distribution, the director (1) relies in good faith and with ordinary care on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the Corporation; legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or a committee of the Board of which the director is not a member; (2) while acting in good faith and with ordinary care, considers the Corporation's assets to be at least that of their book value; or (3) in determining whether the Corporation made adequate provision for paying, satisfying, or discharging all of its liabilities and obligations, relied in good faith and with ordinary care on financial statements or other information concerning a person who was or became contractually obligated to satisfy or discharge some or all of these liabilities or obligations. Furthermore, directors are protected from liability if, in exercising ordinary care, they acted in good faith and in reliance on the written opinion of an attorney for the Corporation. Directors held liable for an improper distribution are entitled to contribution from persons who accepted or received the improper distributions knowing they were improper. Contribution is in proportion to the amount received by each such person.

**2.13. DELEGATION DUTIES.** Directors may select advisors and delegate duties and responsibilities to them, such as the full power to buy or otherwise acquire stocks, bonds, securities, and other investments on the Corporation's behalf; and to sell, transfer, or otherwise dispose of the Corporation's assets and properties at a time and for a consideration that the advisor deems appropriate. The directors have no liability for actions taken or omitted by the advisor if the Board acts in good faith and with ordinary care in selecting the advisor. The Board may remove or replace the advisor at any time and without any cause whatsoever.

**2.14. INTERESTED DIRECTORS.** Contracts or transactions between directors, officers, or members who have a financial interest in the matter are not void or voidable solely for that reason. Nor are they void or voidable solely because the director, officer, or member is present at or participates in the meeting that authorizes the contract or transaction, or solely because the interested party's votes are counted for the purpose. However, every director with any personal



interest in the transaction must disclose all material facts concerning the transaction, including all potential personal benefit and potential conflicts of interest, to the other members of the Board or other group authorizing the transaction. The transaction must be approved by a majority of the uninterested directors or other group with the authority to authorize the transaction.

**2.15. ACTIONS OF BOARD OF DIRECTORS.** The Board will try to act by consensus. However, if a consensus is not available, the vote of a majority of directors present and voting at a meeting at which a quorum is present is enough to constitute the act of the Board, unless the act of a greater number is required by law or by some other provision of these Bylaws. A director who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the Board's decision. For the purpose of determining the decision of the Board, a director who is represented by proxy in a vote is considered present.

**2.16. PROXIES.** A director may vote by proxy. All proxies must be in writing, must bear the signature of the director giving the proxy, and must bear the date on which the proxy was executed by the director. No proxy is valid after three (3) months from the date of its execution.

**2.17. COMPENSATION.** Directors may receive salaries for their services. The Board may adopt a resolution providing for paying directors a fixed sum and expenses of attendance, if any, for attending each Board meeting. A director may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a director will be reasonable and commensurate with the services performed.

**2.18. REMOVING DIRECTORS.** The Board may vote to remove a director at any time, without cause. A meeting to consider removing a director may be called and noticed following the procedures provided in these Bylaws for a special meeting of the Board of Directors. The notice of the meeting will state that the issue of possibly removing the director will be on the agenda. At the meeting, the director may present evidence of why he or she should not be removed and may be represented by an attorney at and before the meeting. Also, at the meeting, the Corporation will consider possible arrangements for resolving the problems that are in the mutual interest of the Corporation and the director. A director may be removed by the affirmative vote of three-fourths of the Board.

### **ARTICLE THREE: OFFICERS AND OTHER AGENTS**

**3.01. OFFICER POSITIONS.** The Corporation's officers will be a president, a secretary, and a treasurer. The Board may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. The same person may hold any two or more offices, except for president and secretary.

**3.02. ELECTION AND TERM OF OFFICE.** The Corporation's officers will be appointed annually by the Board at the annual Board meeting. If officers are not appointed at this time, they will be appointed as soon thereafter as possible. Each officer will hold office until a successor is duly selected and qualifies. An officer may be appointed to succeed himself or herself in the same office.



**3.03. REMOVAL.** Any officer elected or appointed by the Board may be removed by the Board with or without cause. Removing an officer will be without prejudice to the officer's contractual rights, if any.

**3.04. VACANCIES.** The Board may select a person to fill a vacancy in any office for the unexpired portion of the officer's term.

**3.05. PRESIDENT.** The president shall be the chief executive officer of the Corporation and, subject to the supervision of the Board of Directors, shall have general management and control of the business and property of the Corporation in the ordinary course of its business with all such powers with respect to such general management and control as may be reasonably incident to such responsibilities, including, but not limited to, the power to employ, discharge, or suspend employees and agents of the Corporation, to fix the compensation of employees and agents, and to suspend, with or without cause, any officer of the Corporation pending final action by the Board of Directors with respect to continued suspension, removal, or reinstatement of such officer. The President may, without limitation, agree upon and execute all division and transfer orders, bonds, contracts, and other obligations in the name of the Corporation.

**3.06. TREASURER.** The Treasurer shall have custody of the Corporation's funds and securities, shall keep full and accurate accounts of receipts and disbursements, and shall deposit all moneys and valuable effects in the name and to the credit of the Corporation in such depository or depositories as may be designated by the Board of Directors. The Treasurer shall audit all payrolls and vouchers of the Corporation, receive, audit, and consolidate all operating and financial statements of the Corporation and its various departments, shall supervise the accounting and auditing practices of the Corporation, and shall have charge of matters relating to taxation. Additionally, the Treasurer shall have the power to endorse for deposit, collection, or otherwise all checks, drafts, notes, bills of exchange, and other commercial paper payable to the Corporation and to give proper receipts and discharges for all payments to the Corporation. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or as may be delegated from time to time by the President.

**3.07. SECRETARY.** The Secretary shall maintain minutes of all meetings of the Board of Directors and of the Shareholders or consents in lieu of such minutes in the Corporation's minute books, and shall cause notice of such meetings to be given when requested by any person authorized to call such meetings. The Secretary may sign with the President, in the name of the Corporation, all contracts of the Corporation. The Secretary shall have charge of the certificate books, stock transfer books, stock ledgers, and such other stock books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection by any Director at the office of the Corporation during business hours. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or as may be delegated from time to time by the President.

#### **ARTICLE FOUR: COMMITTEES**





**4.01. ESTABLISHING COMMITTEES.** The Board may adopt a resolution establishing one or more committees delegating specified authority to a committee, and appointing or removing members of a committee. A committee will include two or more directors and may include persons who are not directors. If the Board delegates any of its management authority to a committee, the majority of the committee will consist of directors. The Board may also delegate to the president its power to appoint and remove members of a committee that has not been delegated any management authority of the Board. The Board may establish qualifications for membership on a committee. Establishing a committee or delegating authority to it will not relieve the Board, or any individual director, of any responsibility imposed by these Bylaws or otherwise imposed by law. No committee has the authority of the Board to:

- (a) Amend the Certificate of Formation.
- (b) Adopt a plan of merger or of consolidation with another corporation.
- (c) Authorize the sale, lease, exchange, or mortgage of all or substantially all of the Corporation's property and assets.
- (d) Authorize voluntary dissolution of the Corporation.
- (e) Revoke proceedings for voluntary dissolution of the Corporation.
- (f) Adopt a plan for distributing the Corporation's assets.
- (g) Amend, alter, or repeal these Bylaws.
- (h) Elect, appoint, or remove a member of a committee or a director or officer of the Corporation.
- (i) Approve any transaction to which the Corporation is a party and that involves a potential conflict of interest as defined in paragraph 7.04, below.
- (j) Take any action outside the scope of authority delegated to it by the Board.

**4.02. TERM OF OFFICE.** Each committee member will continue to serve on the committee until the next annual members' meeting and until a successor is appointed. However, a committee member's term may terminate earlier if the committee is terminated, or if the member dies, ceases to qualify, resigns, or is removed as a member. A vacancy on a committee may be filled by an appointment made in the same manner as an original appointment. A person appointed to fill a vacancy on a committee will serve for the unexpired portion of the terminated committee member's term.

**4.03. CHAIR AND VICE-CHAIR.** One member of each committee will be designated as the committee chair, and another member of each committee will be designated as the vice-chair.



The chair and vice-chair will be elected by the committee members or appointed by the president. The chair will call and preside at all meetings of the committee. When the chair is absent, cannot act, or refuses to act, the vice-chair will perform the chair's duties. When a vice-chair acts for the chair, the vice-chair has all the powers of, and is subject to all the restrictions on the chair.

**4.04. NOTICE OF MEETINGS.** Written or printed notice of a committee meeting will be delivered to each member of a committee not less than seven nor more than 30 days before the date of the meeting. The notice will state the place, day, and time of the meeting, and the purpose or purposes for which it is called.

**4.05. QUORUM.** One-half of the number of committee members constitutes a quorum for transacting business at any meeting of the committee. The committee members present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough committee members leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of committee members required for a quorum. If a quorum is never present at any time during a meeting, the chair may adjourn and reconvene the meeting once without further notice.

**4.06. ACTIONS OF COMMITTEES.** Committees will try to take action by consensus. However, if a consensus is not available, the vote of a majority of committee members present and voting at a meeting at which a quorum is present is enough to constitute the act of the committee unless the act of a greater number is required by statute or by some other provision of these Bylaws. A committee member who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the act of the committee.

**4.07. PROXIES.** A committee member may not vote by proxy.

**4.08. COMPENSATION.** Committee members may receive salaries for their services. The Board may adopt a resolution providing for paying committee members a fixed sum and expenses of attendance, if any, for attending each meeting of the committee. A committee member may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a committee member will be reasonable and commensurate with the services performed.

**4.09. RULES.** Each committee may adopt its own rules, consistent with these Bylaws or with other rules that may be adopted by the Board.

#### ARTICLE FIVE: TRANSACTIONS OF CORPORATION

**5.01. CONTRACTS.** The Board may authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of, and on behalf of, the Corporation. This authority may be limited to a specific contract or instrument, or it may extend to any number and type of possible contracts and instruments.



**5.02. DEPOSITS.** All the Corporation's funds will be deposited to the credit of the Corporation in banks, trust companies, or other depositaries that the Board selects.

**5.03. GIFTS.** The Board may accept, on the Corporation's behalf, any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation. The Board may make gifts and give charitable contributions not prohibited by these Bylaws, the Certificate of Formation, state law, and provisions set out in federal tax law that must be complied with to maintain the Corporation's federal and state tax status.

**5.04. POTENTIAL CONFLICTS OF INTEREST.** The Corporation may not make any loan to a director or officer of the Corporation. A director, officer, or committee member of the Corporation may lend money to, and otherwise transact business with, the Corporation except as otherwise provided by these Bylaws, the Certificate of Formation, and applicable law. Such a person transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation. The Corporation may not borrow money from, or otherwise transact business with a director, officer, or committee member of the Corporation unless the transaction is described fully in a legally binding instrument and is in the Corporation's best interests. The Corporation may not borrow money from or otherwise transact business with a director, officer, or committee member of the Corporation without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

**5.05. PROHIBITED ACTS.** As long as the Corporation exists, and except with the Board's prior approval, no director, officer, or committee member of the Corporation may:

(a) Do any act in violation of these Bylaws or a binding obligation of the Corporation.

(b) Do any act with the intention of harming the Corporation or any of its operations.

(c) Do any act that would make it impossible or unnecessarily difficult to carry on the Corporation's intended or ordinary business.

(d) Receive an improper personal benefit from the operation of the Corporation.

(e) Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business.

(f) Wrongfully transfer or dispose of Corporation property, including intangible property such as good will.

(g) Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of its business.



(h) Disclose any of the Corporation's business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it.

#### ARTICLE SIX: BOOKS AND RECORDS

**6.01. REQUIRED BOOKS AND RECORDS.** The Corporation will keep correct and complete books and records of account. The books and records include:

(a) A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including but not limited to the Certificate of Formation, and any articles of amendment, restated articles, articles of merger, articles of consolidation, and statement of change of registered office or registered agent.

(b) A copy of all bylaws, including these Bylaws, and any amended versions or amendments to them.

(c) Minutes of the proceedings of the Board, and committees having any of the authority of the Board.

(d) A list of the names and addresses of the directors, officers, and any committee members of the Corporation.

(e) A financial statement showing the Corporation's assets, liabilities, and net worth at the end of the three most recent fiscal years.

(f) A financial statement showing the Corporation's income and expenses for the three most recent fiscal years.

(g) All rulings, letters, and other documents relating to the Corporation's federal, state, and local tax status.

(h) The Corporation's federal, state, and local tax information or income-tax returns for each of the Corporation's three most recent tax years.

**6.02. INSPECTION AND COPY.** Any director, officer, or committee member of the Corporation may inspect and receive copies of all the corporate books and records required to be kept under the bylaws. Such a person may, by written request, inspect or receive copies if he or she has a proper purpose related to his or her interest in the Corporation. He or she may do so through his or her attorney or other duly authorized representative. The inspection may take place at a reasonable time, no later than five working days after the Corporation receives a proper written request. The Board may establish reasonable copying fees, which may cover the cost of materials and labor but may not exceed fifty (50) cents per page. The Corporation will





provide requested copies of books or records no later than five working days after receiving a proper written request.

#### ARTICLE SEVEN: FISCAL YEAR

The fiscal year of the Corporation will begin on the first day of January and end on the last day in December in each year.

#### ARTICLE EIGHT: INDEMNIFICATION

##### **8.01. WHEN INDEMNIFICATION IS REQUIRED, PERMITTED AND PROHIBITED.**

(a) The Corporation will indemnify a director, officer, member, committee member, employee, or agent of the Corporation who was, is, or may be named as a defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Corporation. For the purposes of this article, an agent includes one who is or was serving at the Corporation's request as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee-benefit plan, or other enterprise.

(b) The Corporation will indemnify a person only if he or she acted in good faith and reasonably believed that his or her conduct was in the Corporation's best interests. In case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Corporation will not indemnify a person who is found liable to the Corporation or is found liable to another on the basis of improperly receiving a personal benefit from the Corporation. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted. Termination of a proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Corporation.

(c) The Corporation will pay or reimburse expenses incurred by a director, officer, committee member, employee, or agent of the Corporation in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Corporation when the person is not a named defendant or respondent in the proceeding.

(d) In addition to the situations otherwise described in this paragraph, the Corporation may indemnify a director, officer, committee member, employee, or agent of the Corporation to the extent permitted by law. However, the Corporation will not indemnify any person in any situation in which indemnification is prohibited by paragraph 8.01(a), above.



(e) The corporation may advance expenses incurred or to be incurred in the defense of a proceeding to a person who might eventually be entitled to indemnification, even though there has been no final disposition of the proceeding. Advancement of expenses may occur only when the procedural conditions specified in paragraph 8.03(c), below, have been satisfied. Furthermore, the Corporation will never advance expenses to a person before final disposition of a proceeding if the person is a named defendant or respondent in any proceeding brought by the Corporation or if the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

**8.02. EXTENT AND NATURE OF INDEMNITY.** The indemnity permitted under these Bylaws includes indemnity against judgments, penalties, (including excise and similar taxes), fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. If the proceeding was brought by or on behalf of the Corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

**8.03. PROCEDURES RELATING TO INDEMNIFICATION PAYMENTS.**

(a) Before the Corporation may pay any indemnification expenses (including attorney's fees), the Corporation must specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in subparagraph (c), below. The Corporation may make these determinations and decisions by any one of the following procedures:

(i) Majority vote of a quorum consisting of directors who, at the time of the vote, are not named defendants or respondents in the proceeding.

(ii) If such a quorum cannot be obtained, by a majority vote of a committee of the Board, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding.

(iii) Determination by special legal counsel selected by the Board by the same vote as provided in subparagraphs (i) or (ii), above, or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors.

(b) The Corporation will authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If special legal counsel determines that



indemnification is permissible, authorization of indemnification and determination of reasonableness of expenses will be made as specified by subparagraph (a)(iii), above, governing selection of special legal counsel. A provision contained in the Certificate of Formation, or a resolution of members or the Board that requires the indemnification permitted by paragraph 8.01, above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

(c) The Corporation will advance expenses before final disposition of a proceeding only after it determines that the facts then known would not preclude indemnification. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment will be made in the same manner as a determination that indemnification is permissible under subparagraph (a), above. In addition to this determination, the Corporation may advance expenses only after it receives a written affirmation and undertaking from the person to receive the advance. The person's written affirmation will state that he or she has met the standard of conduct necessary for indemnification under these Bylaws. The written undertaking will provide for repayment of the amounts advanced by the Corporation if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking will be an unlimited general obligation of the person, but it need not be secured and may be accepted without reference to financial ability to repay.

#### ARTICLE NINE: NOTICES

**9.01. NOTICE BY MAIL OR TELEGRAM.** Any notice required or permitted by these Bylaws to be given to a director, officer, or member of a committee of the Corporation may be given by mail, fax or email if the director, officer or member agrees to accept notice by email. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his or her address as it appears on the corporate records, with postage prepaid. A person may change his or her address in the corporate records by giving written notice of the change to the secretary of the corporation.

**9.02. SIGNED WAIVER OF NOTICE.** Whenever any notice is required by law or under the Certificate of Formation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice being waived.

**9.03. WAIVING NOTICE BY ATTENDANCE.** A person's attendance at a meeting constitutes waiver of notice of the meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

#### ARTICLE TEN: SPECIAL PROCEDURES CONCERNING MEETINGS



**10.01. MEETING BY TELEPHONE.** The Board of Directors, and any committee of the Corporation, may hold a meeting by telephone conference-call procedures. In all meetings held by telephone, matters must be arranged in such a manner that all persons participating in the meeting can hear each other; the notice of a meeting by telephone conference must state the fact that the meeting will be held by telephone as well as all other matters required to be included in the notice; and a person's participating in a conference-call meeting constitutes his or her presence at the meeting.

**10.02. DECISION WITHOUT MEETING.** Any decision required or permitted to be made at a meeting of the Board, or any committee of the Corporation may be made without a meeting. A decision without a meeting may be made if a written consent to the decision is signed by all the persons entitled to vote on the matter. The original signed consents will be placed in the Corporation minute book and kept with the corporate records. Furthermore, in accordance with the Certificate of Formation, action may be taken without a meeting when there are signed written consents by the number of members, directors, or committee members whose votes would be necessary to take action at a meeting at which all such persons entitled to vote were present and voted. Each written consent must be signed and bear the date of signature of the person signing it. A photographic, facsimile, or similar reproduction of a signed writing, will be treated as an original being signed by the member, director, or committee member. Consents must be delivered to the Corporation. A consent signed by fewer than all members, directors, or committee members is not effective to take the intended action unless the required number of consents are delivered to the Corporation within 60 days after the date that the earliest-dated consent was delivered to the Corporation. The delivery may be made to the Corporation's registered office, registered agent, principal place of business, or an officer or agent having custody of books in which the relevant proceedings are recorded. If the delivery is made to the Corporation's principal place of business, the consent must be addressed to the president or principal executive officer. The Corporation will give prompt notice of the action taken to persons who do not sign consents. If the action taken requires documents to be filed with the secretary of state, the filed documents will indicate that these written consent procedures were followed to authorize the action and filing.

**10.03. PROXY VOTING.** A person authorized to exercise a proxy may not exercise the proxy unless it is delivered to the officer presiding at the meeting before the business of the meeting begins. The secretary or other person taking the minutes of the meeting will record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy will not be effective for that meeting. A proxy filed with the secretary of the Corporation or other designated officer remains in force until the first of the following occurs:

- (a) An instrument revoking the proxy is delivered to the secretary or other designated officer.
- (b) The proxy authority expires under the proxy's terms.
- (c) The proxy authority expires under the terms of these Bylaws.





## **ARTICLE ELEVEN: AMENDING BYLAWS**

These Bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board of Directors. The notice of any meeting at which these Bylaws are altered, amended, or repealed, or at which new bylaws are adopted will include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions.

## **ARTICLE TWELVE: MISCELLANEOUS PROVISIONS**

**12.01. LEGAL AUTHORITIES GOVERNING CONSTRUCTION OF BYLAWS.** These Bylaws will be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

**12.02. LEGAL CONSTRUCTION.** To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and the bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

**12.03. HEADINGS.** The headings used in the bylaws are for convenience and may not be considered in construing the bylaws.

**12.04. NUMBER.** All singular words include the plural, and all plural words include the singular.

**12.05. SEAL.** The Board of Directors may, but are not required to, provide for a corporate seal.

**12.06. POWER OF ATTORNEY.** A person may execute any instrument related to the Corporation by means of a power of attorney if an original executed copy of the power of attorney is provided to the secretary to be kept with the corporate records.

**12.07. PARTIES BOUND.** The Bylaws will bind and inure to the benefit of the directors, officers, committee members, employees, and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as the Bylaws otherwise provide.



CERTIFICATE OF SECRETARY

The undersigned, the Secretary of the Corporation, hereby certifies that the foregoing Bylaws were adopted by the Board of Directors of the Corporation as of April 3, 2014.

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**BRENDA TOLBERT, SECRETARY**



**SECRETARY'S CERTIFICATE**

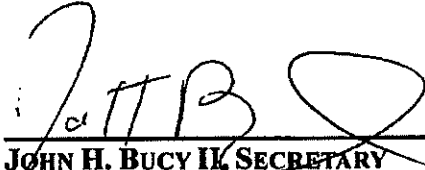
I, John H. Bucy II, Secretary of Whole Woman's Health Alliance, a Texas Non-Profit Corporation (the "Corporation"), hereby certify that:

1. The Board authorized and directed the Officers of the Corporation to take any and all necessary actions to establish a non-surgical (medication) abortion clinic in the State of Indiana; including, but not limited to, preparing, filing and processing an Application for a License to Operate an Abortion Clinic in the State of Indiana.

2. The Officers retained \_\_\_\_\_ as Medical Director and \_\_\_\_\_ as Clinic Manager and Facility Administrator.

3. The Officers specifically directed and authorized \_\_\_\_\_ and \_\_\_\_\_ to sign the Application.

**I HAVE DULY EXECUTED THIS CERTIFICATE ON DECEMBER 8, 2017.**


  
\_\_\_\_\_  
JOHN H. BUCY II, SECRETARY

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS    §

**THIS SECRETARY'S CERTIFICATE WAS ACKNOWLEDGED BEFORE ME ON DECEMBER 8, 2017, BY JOHN H. BUCY II AS SECRETARY OF WHOLE WOMAN'S HEALTH ALLIANCE.**



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS  
NAME: KRISTIE LEA AMANN

**MY COMMISSION EXPIRES: MAY 18, 2020**



## **MANAGEMENT SERVICES AGREEMENT**

This Management Services Agreement (the "Agreement") is entered into by and between Whole Woman's Health Alliance ("WWHA") and Whole Woman's Health, LLC (the "Company"). The Company and WWHA are sometimes referred to herein collectively as the "Parties" and individually as a "Party".

### **RECITALS:**

- A. WWHA operates a medical clinic in South Bend, Indiana (the "Clinic").
- B. The Company has experience and expertise in providing management services to similar facilities.
- C. WWHA desires that Company provide management services to WWHA.
- D. Company is willing to provide to WWHA practice management services for the Clinic pursuant to the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1 APPOINTMENT AND TERM**

**Section 1.01. Appointing Company as Agent for the WWHA:** The WWHA appoints the Company as exclusive agent for managing the Clinic, and the Company accepts the appointment. During the term of this Agreement, the Company may accept work performing similar services to other entities. The Company will be an independent contractor. The Company will not be liable for financial losses of WWHA.

**Section 1.02. Term:** This Agreement shall commence on April 1, 2017 (the "Commencement Date") and expire on March 31, 2020 (the "Initial Term"). Following the expiration of the Initial Term, and provided that neither Party is in breach or default of a material provision of this Agreement, this Agreement shall renew for successive one (1) year terms ("Extended Term") unless either Party provides written notice of its intent not to renew within sixty (60) days prior to the expiration of the Initial Term. Notwithstanding the foregoing, at any time during the Initial Term or the Extended Term, this Agreement may be terminated as provided in Article 6. The Initial Term and any Extended Term are referred to as the "Term".

**Section 1.03. Location of the Facility:** The Clinic is located at 3511 Lincoln Way West, South Bend, Indiana 46628-1141.

**Section 1.04. License:** WWHA has filed an Application to Operate an Abortion Clinic (the "Application") with the Indiana State Department of Health that will enable WWHA to own





and operate the Clinic.

## **ARTICLE 2**

### **GENERAL DESCRIPTION OF SERVICES PROVIDED AND EXCLUDED SERVICES**

**Section 2.01. General Description of Services Provided:** The Company will furnish the services of its organization, and exercise professional skill and competence in managing the Clinic. The services provided by Company shall, include, but not be limited to, accounting and bookkeeping, other financial matters, risk management, personnel benefits, training, training protocols and procedures, manuals, practice forms and documentation, policies and procedures, licensing and regulatory compliance, inventory management, supplies, including medical supplies, contract negotiations and vendor relations, accounts payable and receivables, marketing, advertising, communications, including public relations, social media, and conventional media, and related matters of the Clinic.

**Section 2.02. Supervision of Personnel:** The Company will supervise all personnel it provides in its role as manager to the practice. The Company will not provide or supervise any medical care or medical services provided by the Clinic that legally has to be provided and supervised by a medical professional.

**Section 2.03. Legal Compliance:** The Company will comply with all federal, state, and local laws, ordinances, regulations, orders, and other legal requirements that now or during the term of this Agreement apply to managing the Clinic as this Agreement provides.

## **ARTICLE 3**

### **SPECIFIC SERVICES PROVIDED**

**Section 3.01. Books and Records:** The Company will maintain accurate, complete, and separate books and records according to generally accepted accounting standards and procedures. The records will show income and expenditures relating to operation of the Clinic and will be maintained so that individual items and aggregate amounts of accounts payable and accounts receivable, available cash, and other assets and liabilities relating to the Clinic may be readily determined at any time.

**Section 3.02. Preparing Payroll-Tax Returns:** The Company will prepare and file all required payroll-tax returns and other documents, including but not limited to those required under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, and any similar federal, state, or local legislation, and all withholding-tax returns required for employees of the Clinic and Company whose work relates to the Clinic.

**Section 3.03. Information Requested by the Company:** The Company will furnish any information relating to the financial, physical, or operational condition of the WWHA that WWHA may request from time to time.

**Section 3.04. Employees and Independent Contractors:** The Company shall be responsible for recruiting, interviewing, and hiring all employees who will be working in the



Clinic, including additional physicians and medical professionals that may enter into contracts with the Clinic, but not be retained as employees.

**Section 3.05. Human Resources:** The Company shall provide the human resources services necessary for the Clinic, including (i) establishment of human resources policies and procedures, and (ii) fringe benefit programs.

**Section 3.06. Billing and Collections:** The Company shall be responsible for all patient billing, collection and accounts receivables management.

**Section 3.07. Marketing and Public Relations:** The Company shall provide marketing, advertising, communications services to WWHA, including public relations, press releases, social media, and conventional media, and related matters.

**Section 3.08. Access to Patient Information and Records:** The Company shall implement a system for the maintenance of medical records in compliance with HIPPA.

#### **ARTICLE 4**

##### **DUTIES AND RESPONSIBILITIES OF WWHA**

**Section 4.01. Organization and Operation:** WWHA shall, at all times during the Term, be and remain legally organized and authorized to provide medical services in a manner consistent with all applicable state and federal laws.

**Section 4.02. Insurance:** The Company shall be responsible for maintaining medical professional liability insurance for the physicians providing medical services in the Clinic. The Company shall also be responsible to maintain general liability, worker's compensation, building and contents, and other insurance in accordance with sound business practices.

#### **ARTICLE 5**

##### **COMPENSATION**

**Section 5.01. Compensation to the Company:** Each month, WWHA will pay the Company 20% of gross revenues for the previous month. This compensation will be paid by the end of the month.

**Section 5.02. Reimbursement for Expenses:** WWHA agrees to pay reasonable out-of-pocket expenses to the Company in accordance with the standard procedures of WWHA, which are subject to change from time to time at the sole discretion of WWHA. The Company shall provide WWHA with written receipts for reimbursable expenses.

#### **SECTION 6**

##### **TERMINATION**

**Section 6.01. Termination for Default:** Either Party may terminate this Agreement if it determines that the other Party has materially failed to perform its duties and responsibilities



hereunder; provided, however, that the Party asserting a breach must provide the other party notice of the material default and an opportunity to cure within thirty (30) days of receipt of the written notice of default. If, however, the Party's non-compliance reasonably requires more than thirty (30) days to cure, the Party will not be in default if the cure is commenced within the ten (10) day period and is diligently pursued.

**Section 6.02. Termination by Operation of Law:** Either Party may terminate the Agreement, or any portion hereof, in the event the Agreement, or such part hereof, is deemed to be contrary to local, state, or federal law and it cannot be modified or amended in a way that is mutually agreeable to the Parties and is in compliance with applicable law. The Parties agree to use their best efforts to modify the Agreement consistent with applicable law and to make changes to the minimum extent necessary to try to retain as closely as possible the original economic and other terms, as are reflected in this Agreement.

**Section 6.04. Effect of Termination:** If this Agreement is terminated, the following will apply:

(a) The Company will promptly deliver to WWHHA all books and records in the Company's possession relating to the Clinic and WWHHA, and all other items of property owned by WWHHA and in the Company's possession.

(b) The Company's right to compensation will cease, but the Company will be entitled to be compensated for services rendered before the termination date.

(c) The agency created under this Agreement will cease, and the Company will have no further right and authority to act for the WWHHA.

## **ARTICLE 7 CONFIDENTIALITY AND PROPRIETARY MATERIAL**

**Section 7.01. Confidentiality:** During the Term and for a period of two (2) years thereafter, or for such greater period as permitted required by law, each Party shall not, nor shall it permit, its employees, agents or other persons, organizations, or entities to utilize or divulge any trade secret, process, method, or any other information concerning the personnel, finances, or other business or operations of the other Party, its employees, agents, or its diagnoses, treatment and results thereof relating to any medical care furnished by WWHHA which the Company, its employees, agents or such other person, organization or entity may have learned as a result of the relationship of the Parties pursuant to this Agreement.

**Section 7.02. Proprietary Material:** Each Party on behalf of its employees and agents, acknowledges that the other Party has developed and during the Term may develop, confidential proprietary plans, programs, formulae, methods, policies, procedures, techniques, protocols and other products, services and information (collectively, "Proprietary Material") relating to the business, services, or other activities of each Party. The Parties, on behalf of their respective employees and agents, agree that the Proprietary material is and shall remain the sole and



exclusive property of each respective party, and that the other party, its employees and agents, shall maintain the confidentiality of the Proprietary Material that is not intended for disclosure to the public, and it shall not use, divulge, furnish, or make accessible any Proprietary material to any person or entity, except if necessary to the fulfillment of the Parties' obligations pursuant to this Agreement, and in such cases, then only to the extent necessary or as required by law.

**Section 7.03. Return of Proprietary Material:** Upon termination of this Agreement, each Party shall immediately discontinue use of the Proprietary Material of the other Party and shall promptly return to the other Party all Proprietary Material in its possession, including, but not limited to, all financial materials, patient files, billing information, computer data tapes, all collateral materials, notebooks, papers, operating and procedure manuals and other materials prepared for or provided by, or otherwise acquired on behalf of, the Party, including the return to the respective Parties of copies of all reports, patient records and information relating to the foregoing. WWHHA shall return all software to Company upon termination of this Agreement and shall also pay any outstanding balances due to Company.

**Section 7.04. Injunctive Relief:** The Parties acknowledge that the breach of any provision of this Article 7 will result in irreparable injuries to the non-breaching party for which damages would be inadequate. Therefore, in the event of such breach, the non-breaching party shall be entitled to have an injunction issued by any court of competent jurisdiction, enforcing and restraining the breach in addition to any and all other available legal and equitable remedies. If the non-breaching party utilizes the services of any attorney to enforce successfully any part of this Article 7, including, but not limited to, obtaining an injunction, and the non-breaching party's efforts are successful, then, whether or not suit is brought, the breaching party shall be liable for the payment of all reasonable attorneys' fees, and all other reasonable costs and expenses incurred by the non-breaching party in connection with such litigation. The provisions of this Article 7 shall be a continuing agreement and covenant and shall survive following termination of this Agreement.

## **ARTICLE 8 MISCELLANEOUS**

**Section 8.01. Health Care Delivery:** Nothing in this Agreement is intended or shall be construed to allow Company to exercise control of or direction over the manner or method by which WWHHA and its physicians or other providers perform medical services or other professional health care services. The rendition of all medical services, including, but not limited to, the prescription or administration of medicine and drugs, shall be the sole responsibility of WWHHA and its physicians. Nothing in this Agreement shall be construed to permit the Company to engage in the practice of medicine, it being the sole intention of the Parties hereto that the Services rendered to WWHHA by the Company are solely for the purpose of providing non-medical management and administrative services.

**Section 8.02. Relationship of the Parties:** Neither this Agreement nor any of its provisions shall be construed to create any partnership, agency relationship, nor joint venture relationship between WWHHA and Company. It is expressly understood and agreed by the parties that the Company and WWHHA shall at all times be acting as independent contractors during the





performance of services hereunder. Neither Party, by virtue of its performance hereunder, shall assume or become liable for any obligations, debts, liabilities, claims, or suits of the other Party.

**Section 8.03. Indemnification:** WWHA agrees to indemnify the Company, its officers, directors, agents, and assigns against all claims, causes of action, losses or liabilities (including reasonable attorneys' fees) related to the negligent acts or omissions of WWHA. Company shall indemnify WWHA, its officers, directors, agents, and assigns against all claims, causes of action, losses or liabilities (including reasonable attorneys' fees) related to the negligent acts or omissions of the Company in performing its duties hereunder.

**Section 8.04. Notices:** Any notices required pursuant to this Agreement shall be deemed given (a) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested; (b) one (1) business day after deposit with a recognized overnight courier (such as Federal Express); or (c) upon delivery if sent by a bonded messenger, or (d) upon actual receipt, in each case to the following address:

**To the Company:** Whole Woman's Health, LLC  
Attn: Amy Hagstrom Miller  
1812 Centre Creek Drive, Suite 205  
Austin, TX 78754

**To WWHA:** Whole Woman's Health Alliance  
Attn: Brenda Tolbert  
914 East Jefferson, Suite 204  
Charlottesville, VA 22902

or such other addresses as the Parties may be notified of as described above.

**Section 8.05. Assignment:** Either Party may assign this Agreement or its obligations hereunder with the express written consent of the other Party; such approval shall not be unreasonably withheld.

**Section 8.06. Force Majeure:** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder, other than the payment of any fees or costs for any reason beyond its control; including, without limitation, acts of nature, strikes, statute, regulation, or rule of federal or state or local government, or any agency thereof.

**Section 8.07. Entire Agreement:** This Agreement supersedes any and all other agreements, either written or oral, between the Parties hereto with respect to its subject matter and contains all of the agreements between the Parties with respect to the management of the Clinic. Each Party to this Agreement acknowledges that no representation, inducements, promises, or agreements, oral or otherwise, have been made by any party or person, and that no other agreement, statement, or promise not contained in this Agreement shall be binding.



**Section 8.08. Amendment, Waiver, Discharge, and Termination:** This Agreement and any term or provision hereof may be changed, amended, waived, discharged, or terminated only by an instrument in writing signed by all of the Parties or their respective successors in interest.

**Section 8.09. Governing Law:** This Agreement shall be construed in accordance with the laws of the State of Texas.

**Section 8.10. Confidentiality and Nondisparagement:** The Parties agree that the terms of this Agreement are confidential. The Parties will not disclose the terms of this Agreement to any third parties except as may be necessary to obtain advice and counseling from the Parties' attorney, accountants, or financial advisors, or as may otherwise be required by law. The Parties agree not to make any comments or representations during and after the termination of this Agreement concerning the other Party, their affiliates, directors, employees, or agents, that may disparage or otherwise damage the reputation, good will, or other interests of the Parties, or their affiliates, directors, employees, or agents.

**Section 8.11. Counterparts; One Agreement:** This Agreement and all other copies of it are considered one agreement. This Agreement may be executed concurrently in one or more counterparts, each of which will be considered an original, but all of which together constitute one instrument.

**THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE APRIL 1, 2017.**

**THE COMPANY:**

**WHOLE WOMAN'S HEALTH, LLC**

By:   
**AMY HAGSTROM MILLER, PRESIDENT**

**THE WWHA:**

**WHOLE WOMAN'S HEALTH ALLIANCE**

By:   
**BRENDA TOLBERT, TREASURER**



**Lee, John**

---

**From:** Lee, John  
**Sent:** Monday, December 11, 2017 9:03 AM  
**To:** 'Kristie Amann'; John H. Bucy, II  
**Subject:** RE: Application Documents

Ms. Amann,  
Indiana State Department of Health (ISDH) received the documents you provided via email on 12-08-17. The documents will be reviewed. Thanks,

**John Lee, RN, MBA**  
*Deputy Director of Acute Care*

*Acute Care*  
*Indiana State Department of Health*  
*317.233.7487 office*  
*317.233.7157 fax*  
*jlee@isdh.in.gov*  
*[www.StateHealth.in.gov](http://www.StateHealth.in.gov)*



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---

**From:** Kristie Amann [mailto:kristie@johnbucy.com]  
**Sent:** Friday, December 08, 2017 3:08 PM  
**To:** Lee, John <jlee@isdh.IN.gov>; John H. Bucy, II <john@johnbucy.com>  
**Subject:** Application Documents

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Mr. Lee,

Attached please find the Responses to your email dated October 27, 2017 requesting additional information along with the attachments mentioned in the document. Please let me know if you have any other questions.

--  
Regards,

Kristie Amann

Legal Assistant to  
John H. Bucy, II  
6633 Hwy 290 East  
Suite 104  
Austin, Texas 78723  
Phone: (512) 291-6505  
Fax: (512) 291-6558

## Brune, Adrienne

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**From:** Brune, Adrienne  
**Sent:** Wednesday, January 03, 2018 8:59 AM  
**To:** john@johnbucy.com  
**Subject:** Whole Woman's Health Alliance (South Bend)  
**Attachments:** WWHHA SB App Denial Ltr 01.03.18.pdf

Mr. Bucy:

Attached is a courtesy copy of the *Notice of License Application Denial* being sent on today's date via certified mail to Whole Woman's Health Alliance, 1812 Centre Creek Drive, Suite 205, Austin, Texas 78754. Certified copy to Bucy & Associates, PLLC to follow.

Regards,

**ADRIENNE BRUNE**  
*Attorney*  
*Agency Ethics Officer*

*Office of Legal Affairs*  
*Indiana State Department of Health*  
317.233.7270 office  
317.233.7143 fax  
[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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Eric J. Holcomb  
Governor

Kristina Box, MD, FACOG  
State Health Commissioner

CERTIFIED MAIL

Re: Licensure Application

**NOTICE OF LICENSE APPLICATION DENIAL**

Whole Woman's Health Alliance  
1812 Centre Creek Drive, Suite 205  
Austin, Texas 78754

To Whom It May Concern:

The Commissioner of the Indiana State Department of Health (hereinafter referred to as "Commissioner"), pursuant to Ind. Code § 16-21-2-11, Ind. Code § 4-21.5-3-5, and 410 IAC 26, hereby issues this *Notice of License Application Denial* to Whole Woman's Health Alliance ("WWHA" or "Applicant").

On August 11, 2017, the Indiana State Department of Health (the "Department") received an *Application for License to Operate an Abortion Clinic* from WWHA. On September 21, 2017, the Department requested additional information based on discrepancies noted in WWHA's application. On October 6, 2017, the Department received a revised application from WWHA. After reviewing the revised application, the Department requested additional information to determine compliance with 410 IAC 26. In response to the Department's request to list all of the abortion and health care facilities currently operated by WWHA, its parent, affiliate, and subsidiary organizations, WWHA failed to disclose, concealed, or omitted information related to additional clinics.

Based upon the Department's review, the Commissioner finds WWHA failed to meet the requirement that the Applicant is of reputable and responsible character and the supporting documentation provided inaccurate statements or information. See 410 IAC 26-2-5. You are hereby notified that the Commissioner has **DENIED** the license application of WWHA dated August 11, 2017 (supplemented on October 6, 2017 and December 8, 2017).

A person may not provide abortion services unless the person holds a license issued by the Indiana State Department of Health. A person who knowingly or intentionally operates or advertises the operation of an unlicensed abortion clinic commits a Class A misdemeanor. Ind. Code § 16-21-2-10. Ind. Code § 16-21-2-2.5.

If WWHA wishes to seek administrative review of the *Notice of License Application Denial* pursuant to Indiana Code 4-21.5-3-5, it must file a petition for review within eighteen (18) days after this *Notice of Licensure Application Denial* is served. The petition for review and petition of stay of effectiveness must be postmarked no later than **January 23, 2018**.



2 North Meridian Street • Indianapolis, IN 46204  
317.233.1325 tdd 317.233.5577  
[www.statehealth.in.gov](http://www.statehealth.in.gov)

To promote and provide  
essential public health services.

The petition for review and petition of stay of effectiveness must be in writing and must include facts demonstrating that:

The petitioner is a person to whom the order is specifically directed;  
The petitioner is aggrieved or adversely affected by the order; or  
The petitioner is entitled to review under any law.

If the petition for review and petition for stay of effectiveness is not filed timely, this *Notice of License Application Denial* becomes a **FINAL ORDER**.

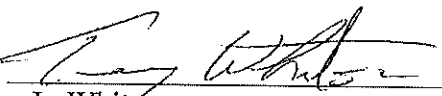
Any Petition for review should be submitted in writing to:

Court Administrator  
Office of Legal Affairs, #3H  
Indiana State Department of Health  
2 North Meridian Street  
Indianapolis, IN 46204-3006

So ordered this 3<sup>RD</sup> day of JANUARY, 2018.

Respectfully,

KRISTINA BOX, MD, FACOG  
STATE HEALTH COMMISSIONER

By:   
Terry L. Whitson  
Assistant Commissioner  
Health Care Quality & Regulatory Commission

CC: Preston Black, Office of Legal Affairs  
Bucy & Associates, PLLC c/o John Bucy, II  
File

## Brune, Adrienne

---

**From:** Snyder, Randall  
**Sent:** Thursday, September 21, 2017 12:07 PM  
**To:** john@johnbucy.com  
**Cc:** Lee, John; Hembree, Jennifer; Brune, Adrienne  
**Subject:** Whole Woman's Health Alliance [Whole Women's Health Alliance]

Dear Mr. Bucy,

While processing the application and waiver request submitted to the ISDH for a new abortion clinic, the following discrepancies were identified and no further consideration of the application will be given until the issues are resolved.

1. The application lists the clinic name as; "Whole Women's Health Alliance" while the waiver request lists the clinic name as; "Whole Woman's Health Alliance"
2. The application states the clinic is located at: 3511 Lincolnway West, South Bend, IN 46628 while the waiver request states the clinic is located at: 200 Colfax Avenue, Suite 400, South Bend, Indiana [no zip code provided].
3. The signature on page 3 has no date.
4. A Clinic Administrator is blank. Please list the Clinic Administrator per 410 IAC 26-4-1(f).

Please make the appropriate correction(s) and resubmit the correct document(s) to: Indiana State Department of Health, ATTN: Division Director Acute Care, 2 N Meridian Street, Indianapolis, IN 46204.

If corrected documentation is not received by the close of business on Friday, October 6, 2017, the application will be denied.

Respectfully,

**RANDY SNYDER, PT, MBA**  
*Division Director*

*Acute Care*  
*Indiana State Department of Health*  
317.233.1286 office  
317.233.7157 fax  
[rsnyder1@isdh.in.gov](mailto:rsnyder1@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**Lee, John**

---

**From:** Lee, John  
**Sent:** Friday, October 13, 2017 11:26 AM  
**To:** 'John Bucy'  
**Subject:** Application Documents

Mr. Bucy,

This message is to confirm receipt of the documents you have submitted.

**John Lee, RN, MBA**  
*Deputy Director of Acute Care*

*Acute Care*  
*Indiana State Department of Health*  
317.233.7487 office  
317.233.7157 fax  
[jlee@isdh.in.gov](mailto:jlee@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**Lee, John**

---

**From:** John Bucy <[john@johnbucy.com](mailto:john@johnbucy.com)>  
**Sent:** Thursday, October 19, 2017 10:31 AM  
**To:** Lee, John  
**Subject:** Whole Woman's Health Alliance

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Mr. Lee,

Is there a process in Indianan to request a pre-survey conference in order to prepare for the survey and inspection?

Thanks,

John Bucy

**Bucy & Muse, PLLC**  
6633 Hwy. 290 East, Suite 104  
Austin, Texas 78723  
Telephone: (512) 291-6505  
Facsimile: (512) 291-6558  
Email: [john@johnbucy.com](mailto:john@johnbucy.com)





**Brune, Adrienne**

---

**From:** John Bucy <john@johnbucy.com>  
**Sent:** Tuesday, January 30, 2018 5:50 PM  
**To:** Clare Deitchman; Brune, Adrienne  
**Cc:** ISDH Court Administrator  
**Subject:** Re: Assignment Acknowledgement ACL-000132-18

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Judge Deitchman,

The time works for us also.

Thank you,

John

Bucy & Associates, PLLC  
6633 Hwy. 290 East, Suite 104  
Austin, Texas 78723  
Telephone: (512) 291-6505  
Facsimile: (512) 291-6558  
Email: [john@johnbucy.com](mailto:john@johnbucy.com)

---

**From:** Clare Deitchman <cdeitchmanlaw@att.net>  
**Reply-To:** Clare Deitchman <cdeitchmanlaw@att.net>  
**Date:** Monday, January 29, 2018 at 7:55 AM  
**To:** Adrienne Brune <abrune@isdh.in.gov>, "john@johnbucy.com" <john@johnbucy.com>  
**Cc:** ISDH Court Administrator <courtadministrator@isdh.in.gov>  
**Subject:** Fw: Assignment Acknowledgement ACL-000132-18

Counsel,

I have been assigned as the Administrative Law Judge (ALJ) to hear the appeal of the license denial for Whole Woman's Health Alliance. I would like to set this for a pre-hearing conference call for purposes of scheduling. Would the two of you be available for a brief conference call on Monday, February 12, 2018 at say at 9:30 EST which would be 8:30 (CST) (Austin Texas Time).

If so, I will send out a Notice in today's mail. If that does not work for you, please provide alternative dates during that week.

Clare Deitchman

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----- Forwarded Message -----

**From:** "Miller, Rochelle" <RocMiller@isdh.IN.gov>

**To:** Clare Deitchman <cdeitchmanlaw@att.net>

**Cc:** "Brune, Adrienne" <ABrune@isdh.IN.gov>; "Carroll, Bart" <BCarroll@isdh.IN.gov>; ISDH Court Administrator <CourtAdministrator@isdh.IN.gov>; "Snyder, Randall" <RSnyder1@isdh.IN.gov>; "Whitson, Terry" <TWhitson@isdh.IN.gov>; "Gilliland, Karen" <Karen.Gilliland@fssa.IN.gov>

**Sent:** Friday, January 26, 2018 3:51 PM

**Subject:** Assignment Acknowledgement ACL-000132-18

Good afternoon Judge Deitchman,

Please see the attached assignment acknowledgement regarding Whole Woman's Health Alliance's license application denial. Hard copy with attachment to follow via mail.

Thank you,

ROCHELLE MILLER

Court Administrator

Office of Legal Affairs

Indiana State Department of Health

317.233.7540 office

317.234.6278 fax

[rocmler@isdh.in.gov](mailto:rocmler@isdh.in.gov)

[www.StateHealth.in.gov](http://www.StateHealth.in.gov)

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## Brune, Adrienne

---

**From:** Brune, Adrienne  
**Sent:** Tuesday, January 09, 2018 2:37 PM  
**To:** 'John Bucy'  
**Subject:** RE: Whole Woman's Health Alliance (South Bend)  
**Attachments:** IC 4-21.5.pdf

Hi John:

The ISDH doesn't have agency-specific administrative appeal procedures other than what's outlined in the *Notice of License Application Denial* and Indiana's Administrative Orders and Procedures Act ("AOPA") (Ind. Code § 4-21.5). I've attached the AOPA for your reference. Chapter 3: Adjudicative Proceedings of AOPA governs here. Typically, once an appeal is received by our Court Administrator, the appeal will be assigned to an ISDH attorney and an ALJ. We hold telephonic prehearing conferences before any hearing would be set. Please let me know if you have any other questions.

Adrienne

**ADRIENNE BRUNE**  
*Attorney*  
*Agency Ethics Officer*

*Office of Legal Affairs*  
*Indiana State Department of Health*  
317.233.7270 office  
317.233.7143 fax  
[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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---

**From:** John Bucy [mailto:[john@johnbucy.com](mailto:john@johnbucy.com)]  
**Sent:** Tuesday, January 09, 2018 2:11 PM  
**To:** Brune, Adrienne <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Subject:** Re: Whole Woman's Health Alliance (South Bend)

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---

Adrienne,

Whole Woman's Health Alliance would like to file a for an administrative review of the denial. Can you send me the Department's specific procedures for the administrative appeal?

Thanks,

John

Bucy & Associates, PLLC  
6633 Hwy. 290 East, Suite 104  
Austin, Texas 78723  
Telephone: (512) 291-6505  
Facsimile: (512) 291-6558  
Email: [john@johnbucy.com](mailto:john@johnbucy.com)

---

**From:** "Brune, Adrienne" <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Date:** Wednesday, January 3, 2018 at 7:58 AM  
**To:** "[john@johnbucy.com](mailto:john@johnbucy.com)" <[john@johnbucy.com](mailto:john@johnbucy.com)>  
**Subject:** Whole Woman's Health Alliance (South Bend)

Mr. Bucy:

Attached is a courtesy copy of the *Notice of License Application Denial* being sent on today's date via certified mail to Whole Woman's Health Alliance, 1812 Centre Creek Drive, Suite 205, Austin, Texas 78754. Certified copy to Bucy & Associates, PLLC to follow.

Regards,

**ADRIENNE BRUNE**  
*Attorney*  
*Agency Ethics Officer*

Office of Legal Affairs  
Indiana State Department of Health  
317.233.7270 office  
317.233.7143 fax  
[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**IC 4-21.5**                    **ARTICLE 21.5. ADMINISTRATIVE ORDERS AND PROCEDURES**

Ch. 1.	Definitions
Ch. 2.	Application
Ch. 2.5.	Opportunity to Correct
Ch. 3.	Adjudicative Proceedings
Ch. 3.5.	Mediation
Ch. 4.	Special Proceedings; Emergency and Other Temporary Orders
Ch. 5.	Judicial Review
Ch. 6.	Civil Enforcement
Ch. 7.	Environmental Adjudication

**IC 4-21.5-1**                    **Chapter 1. Definitions**

4-21.5-1-1	Application
4-21.5-1-2	"Administrative law judge"
4-21.5-1-3	"Agency"
4-21.5-1-4	"Agency action"
4-21.5-1-5	"Court"
4-21.5-1-6	"Final agency action"
4-21.5-1-7	"Law"
4-21.5-1-8	"License"
4-21.5-1-9	"Order"
4-21.5-1-10	"Party"
4-21.5-1-11	"Person"
4-21.5-1-12	"Political subdivision"
4-21.5-1-13	"Proceeding"
4-21.5-1-14	"Rule"
4-21.5-1-15	"Ultimate authority"

**IC 4-21.5-1-1**                    **Application**

Sec. 1. The definitions in this chapter apply throughout this article.  
*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-2**                    **"Administrative law judge"**

Sec. 2. "Administrative law judge" refers to an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding.  
*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-3**                    **"Agency"**

Sec. 3. "Agency" means any officer, board, commission, department division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article. Except as provided in IC 4-21.5-7, the term does not include the judicial department of state government, the legislative department of state government, or a political subdivision.  
*As added by P.L.18-1986, SEC.1. Amended by P.L.41-1995, SEC.1.*

**IC 4-21.5-1-4**                    **"Agency action"**

Sec. 4. "Agency action" means any of the following:  
(1) The whole or a part of an order.  
(2) The failure to issue an order.  
(3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.  
*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-5**                    **"Court"**

Sec. 5. "Court" means a circuit or superior court responsible for taking any action under

this article.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-6 "Final agency action"**

Sec. 6. "Final agency action" means:

- (1) the entry of an order designated as a final order under this article; or
- (2) any other agency action that disposes of all issues in a proceeding for all parties after the exhaustion of all available administrative remedies concerning the action.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-7 "Law"**

Sec. 7. "Law" means the federal or state constitution, any federal or state statute, a rule of an agency, or a federal regulation.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-8 "License"**

Sec. 8. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-9 "Order"**

Sec. 9. "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes:

- (1) a license; or
- (2) a determination under IC 4-21.5-3-6(a)(3) or IC 4-21.5-3-6(a)(4).

*As added by P.L.18-1986, SEC.1. Amended by P.L.42-1995, SEC.1.*

**IC 4-21.5-1-10 "Party"**

Sec. 10. "Party" means:

- (1) a person to whom the agency action is specifically directed; or
- (2) a person expressly designated in the record of the proceeding as a party to the proceeding.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-11 "Person"**

Sec. 11. "Person" means an individual, agency, political subdivision, partnership, corporation, limited liability company, association, or other entity of any character.

*As added by P.L.18-1986, SEC.1. Amended by P.L.8-1993, SEC.27.*

**IC 4-21.5-1-12 "Political subdivision"**

Sec. 12. "Political subdivision" has the meaning set forth in IC 36-1-2-13.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-13 "Proceeding"**

Sec. 13. "Proceeding" refers to a proceeding under this article.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-1-14 "Rule"**

Sec. 14. "Rule" means the whole or any part of an agency statement of general applicability that:

- (1) has or is designed to have the effect of law; and
- (2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.1.*

**IC 4-21.5-1-15        "Ultimate authority"**

Sec. 15. "Ultimate authority" means an individual or panel of individuals in whom the final authority of an agency is vested by law or executive order.

*As added by P.L.18-1986, SEC.1.*

<b>IC 4-21.5-2</b>	<b>Chapter 2. Application</b>
4-21.5-2-0.1	Application of article; application of previous statute; references to previous statutes
4-21.5-2-1	Minimum rights and duties
4-21.5-2-2	Waiver of rights and duties
4-21.5-2-3	Application of law
4-21.5-2-4	Exemptions
4-21.5-2-5	Exemptions; agency actions
4-21.5-2-6	Inapplicability to certain formulation, issuance, and administrative review
4-21.5-2-7	Application of opportunity to correct

**IC 4-21.5-2-0.1      Application of article; application of previous statute; references to previous statutes**

Sec. 0.1. (a) This article governs:

- (1) all proceedings, and all proceedings for judicial review or civil enforcement of agency action, commenced after June 30, 1987; and
- (2) proceedings conducted after June 30, 1987, on remand from a court.

(b) The following are governed by IC 4-22-1 (before its repeal) as it existed on June 30, 1987:

- (1) Any adjudicative proceedings pending on June 30, 1987, and not being conducted on remand after June 30, 1987.
- (2) All judicial review proceedings concerning agency action pending on June 30, 1987.
- (3) All civil enforcement proceedings concerning agency action pending on June 30, 1987.

(c) After June 30, 1987, any reference to Acts 1947, c.365 or IC 4-22-1 in a statute or rule in effect on July 1, 1987, shall be construed as a reference to IC 4-21.5 as effective on July 1, 1987.

*As added by P.L.220-2011, SEC.43.*

**IC 4-21.5-2-1      Minimum rights and duties**

Sec. 1. This article creates minimum procedural rights and imposes minimum procedural duties.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-2-2      Waiver of rights and duties**

Sec. 2. Except to the extent precluded by a law, a person may waive any right conferred upon that person by this article. This section does not permit the waiver of any procedural duty imposed by this article.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-2-3      Application of law**

Sec. 3. This article applies to an agency, except to the extent that a statute clearly and specifically provides otherwise. This article applies (to the extent that a statute other than this article specifically applies this article) to a class of otherwise exempt orders or one (1) or more stages of an otherwise exempt proceeding.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-2-4      Exemptions**

Sec. 4. (a) This article does not apply to any of the following agencies:

- (1) The governor.
- (2) The state board of accounts.
- (3) The state educational institutions.
- (4) The department of workforce development.



- (5) The unemployment insurance review board of the department of workforce development.
- (6) The worker's compensation board of Indiana.
- (7) The military officers or boards.
- (8) The Indiana utility regulatory commission.
- (9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).
- (10) The department of local government finance.
- (11) The Indiana board of tax review.

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

*As added by P.L.18-1986, SEC.1. Amended by P.L.18-1987, SEC.5; P.L.28-1988, SEC.1; P.L.18-1990, SEC.7; P.L.21-1995, SEC.7; P.L.198-2001, SEC.1; P.L.256-2003, SEC.1; P.L.188-2003, SEC.1; P.L.91-2006, SEC.1; P.L.2-2007, SEC.51; P.L.219-2007, SEC.3.*

#### **IC 4-21.5-2-5 Exemptions; agency actions**

Sec. 5. This article does not apply to the following agency actions:

- (1) The issuance of a warrant or jeopardy warrant for the collection of taxes.
- (2) A determination of probable cause or no probable cause by the civil rights commission.
- (3) A determination in a factfinding conference of the civil rights commission.
- (4) A personnel action, except review of:
  - (A) a personnel action by the state employees appeals commission under IC 4-15-2.2-42; or
  - (B) a personnel action that is not covered by IC 4-15-2.2 but may be taken only for cause.
- (5) A resolution, directive, or other action of any agency that relates solely to the internal policy, organization, or procedure of that agency or another agency and is not a licensing or enforcement action. Actions to which this exemption applies include the statutory obligations of an agency to approve or ratify an action of another agency.
- (6) An agency action related to an offender within the jurisdiction of the department of correction.
- (7) A decision of the Indiana economic development corporation, the office of tourism development, the department of environmental management, the tourist information and grant fund review committee (before the repeal of the statute that created the tourist information and grant fund review committee), the Indiana finance authority, the corporation for innovation development, or the lieutenant governor that concerns a grant, loan, bond, tax incentive, or financial guarantee.
- (8) A decision to issue or not issue a complaint, summons, or similar accusation.
- (9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person.
- (10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.
- (11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.
- (12) Determinations of the department of workforce development under IC 22-4.1-4-1.5(c)(1).
- (13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke a driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.
- (14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

- (15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.
- (16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.
- (17) A determination of status as a member of or participant in an environmental performance based program developed and implemented under IC 13-27-8.
- (18) An action of the bureau of motor vehicles subject to review under IC 9-33.

*As added by P.L.18-1986, SEC.1. Amended by P.L.29-1988, SEC.1; P.L.3-1989, SEC.23; P.L.35-1989, SEC.1; P.L.1-1990, SEC.34; P.L.23-1990, SEC.1; P.L.11-1990, SEC.103; P.L.10-1991, SEC.6; P.L.2-1991, SEC.20; P.L.11-1991, SEC.20; P.L.12-1995, SEC.95; P.L.21-1995, SEC.8; P.L.2-1996, SEC.211; P.L.172-1999, SEC.10; P.L.4-2005, SEC.19; P.L.229-2005, SEC.1; P.L.235-2005, SEC.60; P.L.1-2006, SEC.70; P.L.161-2006, SEC.1; P.L.100-2006, SEC.1; P.L.1-2007, SEC.16; P.L.6-2012, SEC.16; P.L.69-2015, SEC.2; P.L.198-2016, SEC.6.*

**IC 4-21.5-2-6                      Inapplicability to certain formulation, issuance, and administrative review**

Sec. 6. This article does not apply to the formulation, issuance, or administrative review (but does apply to the judicial review and civil enforcement) of any of the following:

- (1) Except as provided in IC 12-17.2-4-18.7 and IC 12-17.2-5-18.7, determinations by the division of family resources and the department of child services.
- (2) Determinations by the alcohol and tobacco commission.
- (3) Determinations by the office of Medicaid policy and planning concerning recipients and applicants of Medicaid. However, this article does apply to determinations by the office of Medicaid policy and planning concerning providers.

*As added by P.L.18-1986, SEC.1. Amended by P.L.2-1992, SEC.37; P.L.23-1992, SEC.1; P.L.1-1993, SEC.20; P.L.204-2001, SEC.5; P.L.198-2001, SEC.2; P.L.1-2002, SEC.9; P.L.241-2003, SEC.1; P.L.234-2005, SEC.1; P.L.219-2007, SEC.4.*

**IC 4-21.5-2-7                      Application of opportunity to correct**

Sec. 7. (a) Except as provided in subsection (b), IC 4-21.5-2.5 applies to all agencies in the executive department of state government, including the administrative department.

(b) IC 4-21.5-2.5 does not apply to the Indiana occupational safety and health administration.

*As added by P.L.215-2017, SEC.1.*

## **IC 4-21.5-2.5 Chapter 2.5. Opportunity to Correct**

4-21.5-2.5-1	Application
4-21.5-2.5-2	Exemptions
4-21.5-2.5-3	Exemptions; agency action
4-21.5-2.5-4	"Inspection"
4-21.5-2.5-5	"Violation"
4-21.5-2.5-6	Disclosure of violation in inspection
4-21.5-2.5-7	Notification required; offer to enter corrective plan
4-21.5-2.5-8	Contents of notice; corrective plan
4-21.5-2.5-9	Agency determination of compliance
4-21.5-2.5-10	Corrective order; enforcement action
4-21.5-2.5-11	Public records
4-21.5-2.5-12	Liability

### **IC 4-21.5-2.5-1 Application**

Sec. 1. Except as provided in sections 2 and 3 of this chapter, this chapter applies to the resolution of an alleged violation of a state rule or state statute within the jurisdiction of an agency that is discovered in an inspection conducted after June 30, 2017.  
*As added by P.L.215-2017, SEC.2.*

### **IC 4-21.5-2.5-2 Exemptions**

Sec. 2. This chapter does not apply:

- (1) if the agency conducting the inspection determines that the alleged violation:
  - (A) represents intentional misconduct or an act of fraud by a responsible person or an agent of the responsible person;
  - (B) is not correctable within a reasonable time, as determined by the agency;
  - (C) demonstrates, by a continuing pattern of conduct, a willful disregard by the responsible person of the person's obligation to remedy the errors after the responsible person becomes aware of the errors;
  - (D) constitutes an immediate risk to:
    - (i) any person;
    - (ii) the public health, safety, or welfare; or
    - (iii) the environment; or
  - (E) constitutes a major violation of the agency's rules as expressly provided by the rules of the agency;
- (2) if another statute (including IC 13-30) provides a substantially similar procedure for correction of an alleged violation of a rule or state statute before the agency:
  - (A) imposes a sanction on a person; or
  - (B) terminates a legal right, duty, privilege, immunity, or other legal interest of a person;
- (3) if application of this chapter to a violation would violate a federal law or regulation;
- (4) if the alleged violation is a violation of:
  - (A) a rule or state statute governing the conduct of an agency employee or contractor in the procurement or performance of services or the delivery of property to a governmental entity; or
  - (B) an ethics code;
- (5) if the alleged violation was discovered as part of the preparation of a health care licensing and certification survey by the state department of health;
- (6) if the alleged violation constitutes an act or omission that is charged by a state law enforcement agency as a crime or delinquent act or the agency forwards notice of the alleged violation to the attorney general, a state or local law enforcement agency, or a prosecuting attorney for investigation or prosecution as a crime or delinquent act;
- (7) to a day care regulation under IC 12-17.2; or
- (8) to the responsibilities of the department of child services under IC 31.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-3 Exemptions; agency action**

Sec. 3. This chapter does not limit an agency's authority to issue an emergency or a temporary order under IC 4-21.5-4 or another law if:

- (1) an emergency exists; or
- (2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-4 "Inspection"**

Sec. 4. As used in this chapter, "inspection" means:

- (1) visual analysis; or
- (2) performance of tests;

undertaken to evaluate the operation, use, or condition of real or personal property.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-5 "Violation"**

Sec. 5. As used in this chapter, "violation" refers to a violation of a state rule adopted by an agency or a state statute, except for a violation exempt under section 2 of this chapter.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-6 Disclosure of violation in inspection**

Sec. 6. If an inspection discloses a possible violation, the agency shall proceed under:

- (1) section 7 of this chapter; or
- (2) first section 7 of this chapter, and then section 10 of this chapter.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-7 Notification required; offer to enter corrective plan**

Sec. 7. The agency shall:

- (1) notify the alleged violator in writing that the agency believes a violation may exist; and
- (2) extend an offer in writing to the alleged violator giving the alleged violator an opportunity to enter into a corrective plan to correct the alleged violation before the agency imposes a civil penalty or takes another enforcement action permitted under section 10 of this chapter or another law.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-8 Contents of notice; corrective plan**

Sec. 8. (a) The notice to the alleged violator under section 7 of this chapter must include the following:

- (1) A description of the actions that must be taken to correct the alleged violation.
- (2) The date before which the alleged violator must enter into a corrective plan with the agency in order to avoid an enforcement action under section 10 of this chapter or another law.
- (3) A statement that an alleged violator may enter into a corrective plan without admitting that the violation occurred.

(b) The agency may condition an offer on a requirement that the alleged violator take one (1) or more actions to protect the safety and property of other persons during the time in which the alleged violator reviews the proposed corrective plan.

(c) A corrective plan must require the alleged violator to notify the agency within the time specified in the corrective plan that the violation has been corrected.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-9 Agency determination of compliance**

Sec. 9. The agency shall determine if the alleged violator has substantially corrected the violation and notify the alleged violator whether the alleged violator is in substantial compliance with the applicable rule or state statute not more than thirty (30) days after the earlier of the date that:

- (1) the alleged violation must be corrected under the corrective plan; or
- (2) the alleged violator notifies the agency that the alleged violator has corrected the violation.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-10 Corrective order; enforcement action**

Sec. 10. If:

- (1) a corrective plan is not entered into; or
- (2) an alleged violator fails to substantially correct an alleged violation within the time specified in a corrective plan entered into under this chapter;

the agency may issue a corrective order and take any enforcement action authorized by law for the violation.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-11 Public records**

Sec. 11. The following are public records:

- (1) A corrective plan entered into under this chapter.
- (2) The results of an inspection under section 9 of this chapter.
- (3) Any corrective order described in section 10 of this chapter.

An agency shall retain the public records described in subdivisions (1) through (3) in accordance with the appropriate retention schedule established under IC 5-15.

*As added by P.L.215-2017, SEC.2.*

**IC 4-21.5-2.5-12 Liability**

Sec. 12. The state, a state agency, and an agency's officers, agents, and employees are immune from liability for any act done or omitted in connection with the performance of their duties under this chapter.

*As added by P.L.215-2017, SEC.2.*

<b>IC 4-21.5-3</b>	<b>Chapter 3. Adjudicative Proceedings</b>
4-21.5-3-1	Service of process; notice by publication
4-21.5-3-2	Time computation
4-21.5-3-3	Notice of orders; additional proceedings; effectiveness; stays
4-21.5-3-4	Notice required; licenses and personnel decisions; persons who must be notified; contents
4-21.5-3-5	Notice required; certain licensing and other decisions; persons who must be notified; contents; effectiveness of order; stays
4-21.5-3-6	Notice required; persons who must receive notice; contents; effective date; stay, preliminary hearing, and resulting order
4-21.5-3-7	Review; petition; denial of petition; preliminary hearing
4-21.5-3-8	Sanctions; temporary orders
4-21.5-3-8.5	Sharing administrative law judges among agencies; information concerning administrative law judges
4-21.5-3-9	Ultimate authority of agency; acting as or designating an administrative judge; disqualification; procedures
4-21.5-3-10	Disqualification of administrative law judge
4-21.5-3-11	Ex parte communications; violations
4-21.5-3-12	Administrative law judge; prohibited acts; disqualification
4-21.5-3-13	Disqualification; involvement in preadjudicative stage
4-21.5-3-14	Record; hearing on motion; burden of proof; standard of review
4-21.5-3-15	Participation in proceeding
4-21.5-3-16	Interpreters
4-21.5-3-17	Opportunity to file documents; copies
4-21.5-3-18	Prehearing conference; notice
4-21.5-3-19	Prehearing conference; electronic means; matters considered; prehearing order on pleadings
4-21.5-3-20	Hearing; time and place; notice
4-21.5-3-21	Petition for intervention
4-21.5-3-22	Administrative orders; enforcement
4-21.5-3-23	Summary judgment
4-21.5-3-24	Default or dismissal
4-21.5-3-25	Conduct of hearing; procedure
4-21.5-3-26	Conduct of hearing; evidence
4-21.5-3-27	Final orders; findings of fact and conclusions of law
4-21.5-3-28	Final order; authority to issue; proceedings
4-21.5-3-29	Orders from other than ultimate authority; review by ultimate authority; objections
4-21.5-3-30	Review by another agency
4-21.5-3-31	Modification of final order
4-21.5-3-32	Final orders; public inspection; indexing; deletions; precedent
4-21.5-3-33	Records
4-21.5-3-34	Informal procedures; rules; final orders
4-21.5-3-35	Additional procedural rights; rules
4-21.5-3-36	Persons presiding in proceedings; violations
4-21.5-3-37	Aiding in violation

**IC 4-21.5-3-1      Service of process; notice by publication**

Sec. 1. (a) This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item; or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as provided in subsection (c) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any other method approved by the Indiana Rules of Trial Procedure.

- (c) The following shall be served by United States mail or personal service:
- (1) The initial notice of a determination under section 6 of this chapter.
  - (2) A petition for review of an agency action under section 7 of this chapter.
  - (3) A complaint under section 8 of this chapter.
- (d) The agency shall keep a record of the time, date, and circumstances of the service under subsection (b) or (c).

(e) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(f) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

- (1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or
- (2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(g) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(h) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

- (1) The date on which the document is delivered to the ultimate authority:
  - (A) under subsection (b) or (c); and
  - (B) in compliance with subsection (e).
- (2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.
- (3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.2; P.L.33-1989, SEC.2; P.L.35-1989, SEC.2; P.L.32-2011, SEC.1; P.L.6-2012, SEC.17; P.L.152-2012, SEC.4.*

#### **IC 4-21.5-3-2 Time computation**

Sec. 2. (a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:

- (1) a Saturday;
- (2) a Sunday;
- (3) a legal holiday under a state statute; or
- (4) a day that the office in which the act is to be done is closed during regular business hours.

(b) A period runs until the end of the next day after a day described in subsection (a)(1) through (a)(4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

(c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:

- (1) the person is personally served with the notice; or
  - (2) a notice for the person is deposited in the United States mail.
  - (d) If section 1(f) of this chapter applies, a period of time under this article commences when a notice for the person is published in a newspaper.
  - (e) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.
- As added by P.L.18-1986, SEC.1. Amended by P.L.32-2011, SEC.2.*

**IC 4-21.5-3-3 Notice of orders; additional proceedings; effectiveness; stays**

Sec. 3. (a) An agency shall give notice concerning an order under section 4, 5, 6, or 8 of this chapter. An agency shall conduct additional proceedings under this chapter if required by section 7 or 8 of this chapter. However, IC 4-21.5-4 applies to the notice and proceedings necessary for emergency and other temporary orders.

(b) Notwithstanding IC 1-1-4-1, if:

- (1) a panel of individuals responsible for an agency action has a quorum of its members present, as specified by law; and
- (2) a statute other than IC 1-1-4-1 does not specify the number of votes necessary to take an agency action;

the panel may take the action by an affirmative vote of a majority of the members present and voting. For the purposes of this subsection, a member abstaining on a vote is not voting on the action.

(c) An order is effective when it is issued as a final order under this chapter, except to the extent that:

- (1) a different date is set by this article;
- (2) a later date is set by an agency in its order; or
- (3) an order is stayed.

(d) After an order becomes effective, an agency may suspend the effect of an order, in whole or in part, by staying the order under this chapter.

(e) A party to an order may be required to comply with an order only after the party has been served with the order or has actual knowledge of the order.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.3.*

**IC 4-21.5-3-4 Notice required; licenses and personnel decisions; persons who must be notified; contents**

Sec. 4. (a) Notice must be given under this section concerning the following:

- (1) The denial of a driver's license by the bureau of motor vehicles under IC 9.
- (2) The grant, renewal, restoration, transfer, or denial of a noncommercial fishing or hunting license by the department of natural resources under IC 14.
- (3) The grant, renewal, restoration, transfer, or denial of a license by an entity described in IC 25-0.5-9.
- (4) The grant, renewal, suspension, revocation, or denial of a certificate of registration under IC 25-5.2.

(5) A personnel decision by an agency.

(6) The grant, renewal, restoration, transfer, or denial of a license by the department of environmental management or the commissioner of the department under the following:

(A) Environmental management laws (as defined in IC 13-11-2-71) for the construction, installation, or modification of:

- (i) sewers and appurtenant facilities, devices, or structures for the collection and transport of sewage (as defined in IC 13-11-2-200) or storm water to a storage or treatment facility or to a point of discharge into the environment; or
- (ii) pipes, pumps, and appurtenant facilities, devices, or structures that are part of a public water system (as defined in IC 13-11-2-177.3) and that are used to transport water to a storage or treatment facility or to distribute water to the users



of the public water system;

where a federal, state, or local governmental body has given or will give public notice and has provided or will provide an opportunity for public participation concerning the activity that is the subject of the license.

(B) Environmental management laws (as defined in IC 13-11-2-71) for the registration of a device or a piece of equipment.

(C) IC 13-17-6-1 for a person to engage in the inspection, management, and abatement of asbestos containing material.

(D) IC 13-18-11 for a person to operate a wastewater treatment plant.

(E) IC 13-15-10 for a person to operate the following:

(i) A solid waste incinerator or a waste to energy facility.

(ii) A land disposal site.

(iii) A facility described under IC 13-15-1-3 whose operation could have an adverse impact on the environment if not operated properly.

(F) IC 13-20-4 for a person to operate a municipal waste collection and transportation vehicle.

(b) When an agency issues an order described by subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

A person that is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party on the record of the proceeding.

(c) The notice must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) Any information required by law.

(d) An order under this section is effective when it is served. However, if a timely and sufficient application has been made for renewal of a license described by subsection (a)(3) and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of the proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing under IC 4-21.5-4 an emergency or other temporary order with respect to the license.

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person that has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person that has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1989, SEC.3; P.L.25-1991, SEC.1; P.L.33-1993, SEC.1; P.L.1-1996, SEC.25; P.L.54-2001, SEC.2; P.L.184-2002, SEC.1; P.L.3-2014, SEC.3; P.L.198-2016, SEC.7.*

**IC 4-21.5-3-5 Notice required; certain licensing and other decisions; persons who must be notified; contents; effectiveness of order; stays**

Sec. 5. (a) Notice shall be given under this section concerning the following:

(1) The grant, renewal, restoration, transfer, or denial of a license not described by

section 4 of this chapter.

(2) The approval, renewal, or denial of a loan, grant of property or services, bond, financial guarantee, or tax incentive.

(3) The grant or denial of a license in the nature of a variance or exemption from a law.

(4) The determination of tax due or other liability.

(5) A determination of status.

(6) Any order that does not impose a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest.

(b) When an agency issues an order described in subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

(3) Each competitor who has applied to the agency for a mutually exclusive license, if issuance is the subject of the order and the competitor's application has not been denied in an order for which all rights to judicial review have been waived or exhausted.

(4) Each person who has provided the agency with a written request for notification of the order, if the request:

(A) describes the subject of the order with reasonable particularity; and

(B) is delivered to the agency at least seven (7) days before the day that notice is given under this section.

(5) Each person who has a substantial and direct proprietary interest in the subject of the order.

(6) Each person whose absence as a party in the proceeding concerning the order would deny another party complete relief in the proceeding or who claims an interest related to the subject of the order and is so situated that the disposition of the matter, in the person's absence, may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any other person who is a party to a proceeding concerning the order subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice required by subsection (a) must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) A brief explanation of how the person may obtain notices of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings without intervening in the proceeding, if a petition for review is granted under section 7 of this chapter.

(4) Any other information required by law.

(d) An agency issuing an order under this section or conducting an administrative review of the order shall give notice of any:

(1) prehearing conference;

(2) preliminary hearing;

(3) hearing;

(4) stay; or

(5) order disposing of all proceedings;

concerning the order to a person notified under subsection (b) who requests these notices in the manner specified under subsection (c)(3).

(e) If a statute requires an agency to solicit comments from the public in a nonevidentiary

public hearing before issuing an order described by subsection (a), the agency shall announce at the opening and the close of the public hearing how a person may receive notice of the order under subsection (b)(4).

(f) If a petition for review and a petition for stay of effectiveness of an order described in subsection (a) has not been filed, the order is effective fifteen (15) days (or any longer period during which a person may, by statute, seek administrative review of the order) after the order is served. If both a petition for review and a petition for stay of effectiveness are filed before the order becomes effective, any part of the order that is within the scope of the petition for stay is stayed for an additional fifteen (15) days. Any part of the order that is not within the scope of the petition is not stayed. The order takes effect regardless of whether the persons described by subsection (b)(5) or (b)(6) have been served. An agency shall make a good faith effort to identify and notify these persons, and the agency has the burden of persuasion that it has done so. The agency may request that the applicant for the order assist in the identification of these persons. Failure to notify any of these persons is not grounds for invalidating an order, unless an unnotified person is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the unnotified person.

(g) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of a proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license.

(h) On the motion of any party or other person having a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued before or after the order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties, any person who has a pending petition for intervention in the proceeding, and any person who has requested notice under subsection (d). It must include a statement of the facts and law on which it is based.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.4.*

**IC 4-21.5-3-6      Notice required; persons who must receive notice; contents;  
effective date; stay, preliminary hearing, and resulting order**

Sec. 6. (a) Notice shall be given under this section concerning the following:

(1) A safety order under IC 22-8-1.1.

(2) Any order that:

(A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;

(B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and

(C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.

(3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning regarding a hospital's year end cost settlement.

(4) A determination of audit findings or an equivalent determination by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning arising from a Medicaid postpayment or concurrent audit of a hospital's Medicaid claims.

(5) A license suspension or revocation under:

- (A) IC 24-4.4-2;
- (B) IC 24-4.5-3;
- (C) IC 28-1-29;
- (D) IC 28-7-5;
- (E) IC 28-8-4; or
- (F) IC 28-8-5.

(6) An order issued by the secretary or the secretary's designee against providers regulated by the division of aging or the bureau of developmental disabilities services and not licensed by the state department of health under IC 16-27 or IC 16-28.

(b) When an agency issues an order described by subsection (a), the agency shall give notice to the following persons:

- (1) Each person to whom the order is specifically directed.
- (2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice must include the following:

- (1) A brief description of the order.
- (2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.
- (3) Any other information required by law.

(d) An order described in subsection (a) is effective fifteen (15) days after the order is served, unless a statute other than this article specifies a different date or the agency specifies a later date in its order. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of an order described in subsection (a).

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.5; P.L.42-1995, SEC.2; P.L.80-1998, SEC.1; P.L.35-2010, SEC.1; P.L.153-2011, SEC.1; P.L.186-2015, SEC.1; P.L.35-2016, SEC.1.*

#### **IC 4-21.5-3-7      Review; petition; denial of petition; preliminary hearing**

Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2.2 applies, a person must comply with IC 4-15-2.2-42. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

- (1) States facts demonstrating that:
  - (A) the petitioner is a person to whom the order is specifically directed;
  - (B) the petitioner is aggrieved or adversely affected by the order; or
  - (C) the petitioner is entitled to review under any law.
- (2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:
  - (A) the specific findings, action, or determination of the office of Medicaid policy

and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) with respect to an order described in section 4, 5, 6(a)(1), 6(a)(2), or 6(a)(5) of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) with respect to a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal

proceedings to settle the matter to the extent allowed by law.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.6; P.L.42-1995, SEC.3; P.L.2-1997, SEC.11; P.L.222-2005, SEC.22; P.L.213-2007, SEC.1; P.L.217-2007, SEC.1; P.L.6-2012, SEC.18.*

**IC 4-21.5-3-8 Sanctions; temporary orders**

Sec. 8. (a) An agency may issue a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest not described by section 4, 5, or 6 of this chapter only after conducting a proceeding under this chapter. However, this subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of the proceeding.

(b) When an agency seeks to issue an order that is described by subsection (a), the agency shall serve a complaint upon:

- (1) each person to whom any resulting order will be specifically directed; and
- (2) any other person required by law to be notified.

A person notified under this subsection is not a party to the proceeding unless the person is a person against whom any resulting order will be specifically directed or the person is designated by the agency as a party in the record of the proceeding.

(c) The complaint required by subsection (b) must include the following:

- (1) A short, plain statement showing that the pleader is entitled to an order.
- (2) A demand for the order that the pleader seeks.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-3-8.5 Sharing administrative law judges among agencies; information concerning administrative law judges**

Sec. 8.5. (a) An agency may share an administrative law judge with another agency:

- (1) to avoid bias, prejudice, interest in the outcome, or another conflict of interest;
- (2) if a party requests a change of administrative law judge;
- (3) to ease scheduling difficulties; or
- (4) for another good cause.

An agency may adopt rules under IC 4-22-2 to implement this subsection.

(b) To the extent practicable, an administrative law judge must have expertise in the area of law being adjudicated.

(c) An agency shall post on the agency's Internet web site the:

- (1) name;
- (2) salary and other remuneration; and
- (3) relevant professional experience;

of every person who serves as an administrative law judge for the agency.

*As added by P.L.72-2014, SEC.3.*

**IC 4-21.5-3-9 Ultimate authority of agency; acting as or designating an administrative judge; disqualification; procedures**

Sec. 9. (a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

- (1) act as an administrative law judge;
- (2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or
- (3) designate one (1) or more:

(A) attorneys licensed to practice law in Indiana; or

(B) persons who served as administrative law judges for a state agency before January 1, 2014;

to act as an administrative law judge.

A person designated under subdivision (3) is not required to be an employee of the agency.

A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(b) An agency may not knowingly assign an individual to serve alone or with others as an administrative law judge who is subject to disqualification under this chapter.

(c) If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with others as an administrative law judge shall:

- (1) withdraw as the administrative law judge; or
- (2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

(d) Any party to a proceeding may petition for the disqualification of an individual serving alone or with others as an administrative law judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination. If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

(e) If a substitute is required for an administrative law judge who is disqualified or becomes unavailable for any other reason, the substitute must be appointed in accordance with subsection (a).

(f) Any action taken by a duly appointed substitute for a disqualified or unavailable administrative law judge is as effective as if taken by the latter.

(g) If there is a reasonable likelihood that the ultimate authority will be called upon to:

- (1) review; or
- (2) issue a final order with respect to;

a matter pending before or adjudicated by an administrative law judge, the provisions of section 11 of this chapter that apply to an administrative law judge or to a person communicating with an administrative law judge apply to a member of the ultimate authority and to a person communicating with a member of the ultimate authority.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.7; P.L.72-2014, SEC.4.*

#### **IC 4-21.5-3-10 Disqualification of administrative law judge**

Sec. 10. (a) Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of a proceeding;
- (2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party;
- (3) unless waived or extended with the written consent of all parties or for good cause shown, failure to issue an order not later than ninety (90) days after the latest of:
  - (A) the filing of a motion to dismiss or a motion for summary judgment under section 23 of this chapter that is filed after June 30, 2011;
  - (B) the conclusion of a hearing that begins after June 30, 2011; or
  - (C) the completion of any schedule set for briefing or for submittal of proposed findings of fact and conclusions of law for a disposition under clauses (A) or (B); or
- (4) any cause for which a judge of a court may be disqualified.

Nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge.

(b) This subsection does not apply to a proceeding concerning a regulated occupation (as defined in IC 25-1-7-1), except for a proceeding concerning a water well driller (as described in IC 25-39-3) or an out of state mobile health care entity regulated by the state department of health. An individual who is disqualified under subsection (a)(2) or (a)(3) shall provide the parties a list of at least three (3) special administrative law judges who meet the requirements of:

- (1) IC 4-21.5-7-6, if the case is pending in the office of environmental adjudication;
- (2) IC 14-10-2-2, if the case is pending before the division of hearings of the natural resources commission; or
- (3) any other statute or rule governing qualification to serve an agency other than those described in subdivision (1) or (2).

Subject to subsection (c), the parties may agree to the selection of one (1) individual from the list.

(c) If the parties do not agree to the selection of an individual as provided in subsection (b) not later than ten (10) days after the parties are provided a list of judges under subsection (b), a special administrative law judge who meets the requirements of subsection (b) shall be selected under the procedure set forth in Trial Rule 79(D), 79(E), or 79(F).

*As added by P.L.18-1986, SEC.1. Amended by P.L.32-2011, SEC.3.*

#### **IC 4-21.5-3-11 Ex parte communications; violations**

Sec. 11. (a) Except as provided in subsection (b) or unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with:

- (1) any party;
- (2) any individual who has a direct or indirect interest in the outcome of the proceeding;
- (3) any individual who presided at a previous stage of the proceeding; or
- (4) any individual who is prohibited from assisting the administrative law judge under section 13 of this chapter;

without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of administrative law judges may communicate with other members of the panel regarding a matter pending before the panel, and any administrative law judge may receive aid from staff assistants. However, a staff assistant may not communicate to an administrative law judge any:

- (1) ex parte communications of a type that the administrative law judge would be prohibited from receiving under subsection (a); or
- (2) information that would furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, a person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) may not communicate, directly or indirectly, in connection with any issue in that proceeding while the proceeding is pending, with any person serving as administrative law judge without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as administrative law judge in a proceeding, an individual receives an ex parte communication of a type that would not properly be received while serving, the individual, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative law judge who receives an ex parte communication in violation of this section shall:

- (1) place on the record of the pending matter all written communications received, all



written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each individual from whom the administrative law judge received an ex parte communication; and

(2) advise all parties that these matters have been placed on the record.

Any person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) shall be allowed to rebut a charge of wrongful ex parte communication upon requesting the opportunity for rebuttal within fifteen (15) days after notice of the communication.

(f) If necessary to eliminate the effect of an ex parte communication received in violation of this section, an administrative law judge who receives the communication may be disqualified and the portions of the record pertaining to the communication may be corrected, modified, or preserved by protective order.

(g) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.8.*

#### **IC 4-21.5-3-12      Administrative law judge; prohibited acts; disqualification**

Sec. 12. An administrative law judge who:

(1) comments publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or

(2) engages in financial or business dealings that tend to:

(A) reflect adversely on the administrative law judge's impartiality;

(B) interfere with the proper performance of the administrative law judge's duties;

(C) exploit the administrative law judge's position; or

(D) involve the administrative law judge in frequent financial or business dealings with attorneys or other persons who are likely to come before the administrative law judge;

is subject to disqualification. A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-13      Disqualification; involvement in preadjudicative stage**

Sec. 13. (a) An individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(b) An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(c) An individual who has made a determination of probable cause or other equivalent preliminary determination in a proceeding may serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(d) An individual may serve as an administrative law judge or a person presiding under sections 28, 29, 30, and 31 of this chapter at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(e) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-14      Record; hearing on motion; burden of proof; standard of review**

Sec. 14. (a) An administrative law judge conducting a proceeding shall keep a record of

the administrative law judge's proceedings under this article.

(b) If a motion is based on facts not otherwise appearing in the record for the proceeding, the administrative law judge may hear the matter on affidavits presented by the respective parties or the administrative law judge may direct that the matter be heard wholly or partly on oral testimony or depositions.

(c) At each stage of the proceeding, the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense. Before the hearing on which the party intends to assert it, a party shall, to the extent possible, disclose any affirmative defense specified by law on which the party intends to rely. If a prehearing conference is held in the proceeding, a party notified of the conference shall disclose the party's affirmative defense in the conference.

(d) The proceedings before an administrative law judge are de novo.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.9; P.L.32-2011, SEC.4.*

#### **IC 4-21.5-3-15 Participation in proceeding**

Sec. 15. (a) Any party may participate in a proceeding in person or, if the party is not an individual or is incompetent to participate, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative.  
*As added by P.L.18-1986, SEC.1. Amended by P.L.33-1989, SEC.3.*

#### **IC 4-21.5-3-16 Interpreters**

Sec. 16. (a) A person who:

- (1) cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons; and
- (2) is a party or witness in any proceeding under this article;

is entitled to an interpreter to assist the person throughout the proceeding under this article.

(b) The interpreter may be retained by the person or may be appointed by the agency before which the proceeding is pending. If an interpreter is appointed by the agency, the fee for the services of the interpreter shall be set by the agency. The fee shall be paid from any funds available to the agency or be paid in any other manner ordered by the agency.

(c) Any agency may inquire into the qualifications and integrity of any interpreter and may disqualify any person from serving as an interpreter.

(d) Every interpreter for another person in a proceeding shall take the following oath:

Do you affirm, under penalties of perjury, that you will justly, truly, and impartially interpret to \_\_\_\_\_ the oath about to be administered to him (or her), the questions that may be asked him (or her), and the answers that he (or she) shall give to the questions, relative to the cause now under consideration before this agency?

(e) IC 35-44.1-2-1 concerning perjury applies to an interpreter.

*As added by P.L.18-1986, SEC.1. Amended by P.L.126-2012, SEC.13; P.L.215-2016, SEC.89.*

#### **IC 4-21.5-3-17 Opportunity to file documents; copies**

Sec. 17. (a) The administrative law judge, at appropriate stages of a proceeding, shall give all parties full opportunity to file pleadings, motions, and objections and submit offers of settlement.

(b) The administrative law judge, at appropriate stages of a proceeding, may give all parties full opportunity to file briefs, proposed findings of fact, and proposed orders.

(c) A party shall serve copies of any filed item on all parties.

(d) The administrative law judge shall serve copies of all notices, orders, and other papers generated by the administrative law judge on all parties. The administrative law judge shall give notice of preliminary hearings, prehearing conferences, hearings, stays, and orders

disposing of the proceeding to persons described by section 5(d) of this chapter.  
*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-3-18 Prehearing conference; notice**

Sec. 18. (a) The administrative law judge for the hearing, subject to the agency's rules, may, on the administrative law judge's own motion, and shall, on the motion of a party, conduct a prehearing conference. The administrative law judge may deny a motion for a prehearing conference if the administrative law judge has previously conducted a prehearing conference in the proceeding.

(b) This section and section 19 of this chapter apply if the conference is conducted.

(c) The administrative law judge for the prehearing conference shall set the time and place of the conference and give reasonable written notice to the following:

- (1) All parties.
  - (2) All persons who have filed written petitions to intervene in the matter.
  - (3) All persons entitled to notice under any law.
- (d) The initial prehearing conference notice in a proceeding must include the following:
- (1) The names and mailing addresses of all known parties and other persons to whom notice is being given by the administrative law judge.
  - (2) The names and mailing addresses of all publications used to provide notice under this section.
  - (3) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.
  - (4) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.
  - (5) A statement of the time, place, and nature of the prehearing conference.
  - (6) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held.
  - (7) The name, official title, and mailing address of the administrative law judge for the prehearing conference and a telephone number through which information concerning hearing schedules and procedures may be obtained.
  - (8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.
- (e) Any subsequent prehearing conference notice in the proceeding may omit the information described in subsections (d)(1), (d)(2), (d)(3), (d)(6), and (d)(8).
- (f) Any notice under this section may include any other matters that the administrative law judge considers desirable to expedite the proceedings.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.10.*

**IC 4-21.5-3-19 Prehearing conference; electronic means; matters considered; prehearing order on pleadings**

Sec. 19. (a) This section and section 18 of this chapter apply to prehearing conferences.

(b) To expedite a decision on pending motions and other issues, the administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity:

- (1) to participate in;
- (2) to hear; and
- (3) if technically feasible, to see;

the entire proceeding while it is taking place.

(c) The administrative law judge shall conduct the prehearing conference, as may be appropriate, to deal with such matters as the following:

- (1) Resolution of the issues in the proceeding under section 23 of this chapter.

- (2) Exploration of settlement possibilities.
  - (3) Preparation of stipulations.
  - (4) Clarification of issues.
  - (5) Rulings on identity and limitation of the number of witnesses.
  - (6) Objections to proffers of evidence.
  - (7) A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.
  - (8) The order of presentation of evidence and cross-examination.
  - (9) Rulings regarding issuance of subpoenas, discovery orders, and protective orders.
  - (10) Such other matters as will promote the orderly and prompt conduct of the hearing.
- The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(d) If a prehearing conference is not held, the administrative law judge for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-3-20      Hearing; time and place; notice**

Sec. 20. (a) The administrative law judge for the hearing shall set the time and place of the hearing and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. Unless a shorter notice is required to comply with any law or is stipulated by all parties and persons filing written requests for intervention, an agency shall give at least five (5) days notice of the hearing.

(b) The notice must include a copy of any prehearing order rendered in the matter.

(c) To the extent not included in a prehearing order accompanying it the initial hearing notice in a proceeding must include the following:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the administrative law judge.

(2) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(4) A statement of the time, place, and nature of the hearing.

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(6) The name, official title, and mailing address of the administrative law judge and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(7) A statement of the issues involved and, to the extent known to the administrative law judge, of the matters asserted by the parties.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.

(d) Subsequent hearing notices in the proceeding may omit the information described in subsections (c)(1), (c)(2), (c)(5), and (c)(8).

(e) Any notice under this section may include any other matters the administrative law judge considers desirable to expedite the proceedings.

(f) The administrative law judge shall give notice to persons other than parties and petitioners for intervention who are entitled to notice under any law. Notice under this subsection may include all types of information provided in subsections (a) through (e) or may consist of a brief statement indicating:

- (1) the subject matter, parties, time, place, and nature of the hearing;

- (2) the manner in which copies of the notice to the parties may be inspected and copied;
- (3) the name of the administrative law judge; and
- (4) a telephone number through which information concerning proceeding hearing schedules and procedures may be obtained.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.11.*

#### **IC 4-21.5-3-21      Petition for intervention**

Sec. 21. (a) Before the beginning of the hearing on the subject of the proceeding, the administrative law judge shall grant a petition for intervention in a proceeding and identify the petitioner in the record of the proceeding as a party if:

(1) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding; and

(B) states facts demonstrating that a statute gives the petitioner an unconditional right to intervene in the proceeding; or

(2) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding, at least three (3) days before the hearing; and

(B) states facts demonstrating that the petitioner is aggrieved or adversely affected by the order or a statute gives the petitioner a conditional right to intervene in the proceeding.

(b) The administrative law judge, at least twenty-four (24) hours before the beginning of the hearing, shall issue an order granting or denying each pending petition for intervention.

(c) After the beginning of the hearing on the subject of the proceeding, but before the close of evidence in the hearing, anyone may be permitted to intervene in the proceeding if:

(1) a statute confers a conditional right to intervene or an applicant's claim or defense and the main action have a question of law or fact in common; and

(2) the administrative law judge determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

In exercising its discretion, the administrative law judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the legal interests of any of the parties.

(d) An order granting or denying a petition for intervention must specify any condition and briefly state the reasons for the order. The administrative law judge may modify the order at any time, stating the reasons for the modification. The administrative law judge shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.12.*

#### **IC 4-21.5-3-22      Administrative orders; enforcement**

Sec. 22. (a) The administrative law judge at the request of any party or an agency shall, and upon the administrative law judge's own motion may, issue:

(1) subpoenas;

(2) discovery orders; and

(3) protective orders;

in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts.

(b) The party seeking the order shall serve the order in accordance with these rules of procedure. If ordered by the administrative law judge, the sheriff in the county in which the order is to be served shall serve the subpoena, discovery order, or protective order.

(c) Subpoenas and orders issued under this section may be enforced under IC 4-21.5-6.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-3-23      Summary judgment**

Sec. 23. (a) A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding.

(b) Except as otherwise provided in this section, an administrative law judge shall consider a motion filed under subsection (a) as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure.

(c) Service of the motion and any response to the motion, including supporting affidavits, shall be performed as provided in this article.

(d) Sections 28 and 29 of this chapter apply to an order granting summary judgment that disposes of all issues in a proceeding.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.13; P.L.5-1988, SEC.27; P.L.32-2011, SEC.5.*

**IC 4-21.5-3-24      Default or dismissal**

Sec. 24. (a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) of this chapter;
- (2) file a responsive pleading required by statute or rule;
- (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
- (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

*As added by P.L.18-1986, SEC.1. Amended by P.L.72-2014, SEC.5.*

**IC 4-21.5-3-25      Conduct of hearing; procedure**

Sec. 25. (a) This section and section 26 of this chapter govern the conduct of any hearing held by an administrative law judge.

(b) The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts.

(c) To the extent necessary for full disclosure of all relevant facts and issues, the administrative law judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as

restricted by a limitation under subsection (d) or by the prehearing order.

(d) The administrative law judge may, after a prehearing order is issued under section 19 of this chapter, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as the following:

- (1) Limiting the party's participation to designated issues in which the party has a particular interest demonstrated by the petition.
- (2) Limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding.
- (3) Requiring two (2) or more parties to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

If a person is allowed to intervene in the proceeding after the commencement of a hearing under this section, the administrative law judge may prohibit the intervenor from recalling any witness who has been heard or reopening any matter that has been resolved, unless the intervenor did not receive a notice required by this chapter or the intervenor presents facts that demonstrate that fraud, perjury, or an abuse of discretion has occurred. Any proceedings conducted before the giving of a notice required by this chapter are voidable upon the motion of the party who failed to receive the notice.

(e) The administrative law judge may administer oaths and affirmations and rule on any offer of proof or other motion.

(f) The administrative law judge may give nonparties an opportunity to present oral or written statements. If the administrative law judge proposes to consider a statement by a nonparty, the judge shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the judge shall require the statement to be given under oath or affirmation.

(g) The administrative law judge shall have the hearing recorded at the agency's expense. The agency is not required, at its expense, to prepare a transcript, unless required to do so by law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption. Notwithstanding IC 5-14-3-8, an agency may charge a person who requests that an agency provide a transcript (other than for judicial review under IC 4-21.5-5-13) the reasonable costs of preparing the transcript.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-26      Conduct of hearing; evidence**

Sec. 26. (a) This section and section 25 of this chapter govern the conduct of any hearing conducted by an administrative law judge. Upon proper objection, the administrative law judge shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the administrative law judge may exclude objectionable evidence. The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(b) All testimony of parties and witnesses must be made under oath or affirmation.

(c) Statements presented by nonparties in accordance with section 25 of this chapter may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(f) Official notice may be taken of the following:

- (1) Any fact that could be judicially noticed in the courts.
- (2) The record of other proceedings before the agency.
- (3) Technical or scientific matters within the agency's specialized knowledge.
- (4) Codes or standards that have been adopted by an agency of the United States or this state.

(g) Parties must be:

- (1) notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under subsection (f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and
- (2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (f).

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-3-27**

**Final orders; findings of fact and conclusions of law**

Sec. 27. (a) If the administrative law judge is the ultimate authority for the agency, the ultimate authority's order disposing of a proceeding is a final order. If the administrative law judge is not the ultimate authority, the administrative law judge's order disposing of the proceeding becomes a final order when affirmed under section 29 of this chapter. Regardless of whether the order is final, it must comply with this section.

(b) This subsection applies only to an order not subject to subsection (c). The order must include, separately stated, findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(c) This subsection applies only to an order of the ultimate authority entered under IC 13, IC 14, or IC 25. The order must include separately stated findings of fact and, if a final order, conclusions of law for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Conclusions of law must consider prior final orders (other than negotiated orders) of the ultimate authority under the same or similar circumstances if those prior final orders are raised on the record in writing by a party and must state the reasons for deviations from those prior orders. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(d) Findings must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding. Findings must be based upon the kind of evidence that is substantial and reliable. The administrative law judge's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(e) A substitute administrative law judge may issue the order under this section upon the record that was generated by a previous administrative law judge.

(f) The administrative law judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) An order under this section shall be issued in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f), unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The administrative law judge shall have copies of the order under this section delivered to each party and to the ultimate authority for the agency (if it is not rendered by the ultimate authority).



*As added by P.L.18-1986, SEC.1. Amended by P.L.25-1997, SEC.1; P.L.2-1998, SEC.10.*

**IC 4-21.5-3-28 Final order; authority to issue; proceedings**

Sec. 28. (a) This section applies to proceedings under sections 29, 30, and 31 of this chapter.

(b) The ultimate authority or its designee shall conduct proceedings to issue a final order. A designee may be selected in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be selected for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(c) Any individual serving alone or with others in a proceeding may be disqualified for any of the reasons that an administrative law judge may be disqualified. The procedures in section 9 of this chapter apply to the disqualification and substitution of the individual.

(d) Motions and petitions submitted by a party to the ultimate authority shall be served on each party to the proceeding and to any person described by section 5(d) of this chapter.

(e) In the conduct of its proceedings, the ultimate authority or its designee shall afford each party an opportunity to present briefs. The ultimate authority or its designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) have a transcript prepared, at the agency's expense, of any portion of the record of a proceeding that the ultimate authority or its designee considers necessary;
- (3) exercise the powers of an administrative law judge to hear additional evidence under sections 25 and 26 of this chapter; or
- (4) allow nonparties to participate in a proceeding in accordance with section 25 of this chapter.

Sections 15 and 16 of this chapter concerning representation and interpreters apply to the proceedings of the ultimate authority or its designee.

(f) Notices and orders of the ultimate authority or its designee shall be served on all parties and all other persons who have requested notice under section 5 of this chapter.

(g) The final order of the ultimate authority or its designee must:

- (1) identify any differences between the final order and the nonfinal order issued by the administrative law judge under section 27 of this chapter;
- (2) include findings of fact meeting the standards of section 27 of this chapter or incorporate the findings of fact in the administrative law judge's order by express reference to the order; and
- (3) briefly explain the available procedures and time limit for seeking administrative review of the final order by another agency under section 30 of this chapter (if any is available).

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-3-29 Orders from other than ultimate authority; review by ultimate authority; objections**

Sec. 29. (a) This section does not apply if the administrative law judge issuing an order under section 27 of this chapter is the ultimate authority for the agency.

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

- (1) affirming;
- (2) modifying; or
- (3) dissolving;

the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial

review, a party must not be in default under this chapter and must object to the order in a writing that:

- (1) identifies the basis of the objection with reasonable particularity; and
  - (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.
- (e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.
- (f) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

- (1) the date that the order was issued under section 27 of this chapter;
- (2) the receipt of briefs; or
- (3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

(g) After remand of an order under this section to an administrative law judge, the judge's order is also subject to review under this section.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-30      Review by another agency**

Sec. 30. If, under a statute, an agency may review the final order of another agency, the review shall be treated as if it was a continuous proceeding before a single agency. For the purposes of this review and the application of section 3 of this chapter concerning the effectiveness of an order, a final order of the first agency shall be treated as a nonfinal order of an administrative law judge, and the second agency shall review the order under section 29 of this chapter. To preserve an issue for judicial review, a party must comply with section 29(d) of this chapter before the second agency. The ultimate authority for the second agency or its designee may conduct proceedings under section 31 of this chapter.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-31      Modification of final order**

Sec. 31. (a) An agency has jurisdiction to modify a final order under this section before the earlier of the following:

- (1) Thirty (30) days after the agency has served the final order under section 27, 29, or 30 of this chapter.
  - (2) Another agency assumes jurisdiction over the final order under section 30 of this chapter.
  - (3) A court assumes jurisdiction over the final order under IC 4-21.5-5.
- (b) A party may petition the ultimate authority for an agency for a stay of effectiveness of a final order. The ultimate authority or its designee may, before or after the order becomes effective, stay the final order in whole or in part.
- (c) A party may petition the ultimate authority for an agency for a rehearing of a final order. The ultimate authority or its designee may grant a petition for rehearing only if the petitioning party demonstrates that:
- (1) the party is not in default under this chapter;
  - (2) newly discovered material evidence exists; and
  - (3) the evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

The rehearing may be limited to the issues directly affected by the newly discovered evidence. If the rehearing is conducted by a person other than the ultimate authority, section 29 of this chapter applies to review of the order resulting from the rehearing.

(d) Clerical mistakes and other errors resulting from oversight or omission in a final order or other part of the record of a proceeding may be corrected by an ultimate authority or its designee on the motion of any party or on the motion of the ultimate authority or its designee.

(e) An action of a petitioning party or an agency under this section neither tolls the period in which a party may object to a second agency under section 30 of this chapter nor tolls the period in which a party may petition for judicial review under IC 4-21.5-5. However, if a rehearing is granted under subsection (c), these periods are tolled and a new period begins on the date that a new final order is served.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.14.*

#### **IC 4-21.5-3-32      Final orders; public inspection; indexing; deletions; precedent**

Sec. 32. (a) Each agency shall make all written final orders available for public inspection and copying under IC 5-14-3. The agency shall index final orders that are issued after June 30, 1987, by name and subject. An agency shall index an order issued before July 1, 1987, if a person submits a written request to the agency that the order be indexed. An agency shall delete from these orders identifying details to the extent required by IC 5-14-3 or other law. In each case, the justification for the deletion must be explained in writing and attached to the order.

(b) An agency may not rely on a written final order as precedent to the detriment of any person until the order has been made available for public inspection and indexed in the manner described in subsection (a). However, this subsection does not apply to any person who has actual timely knowledge of the order. The burden of proving that knowledge is on the agency.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.15.*

#### **IC 4-21.5-3-33      Records**

Sec. 33. (a) An agency shall maintain an official record of each proceeding under this chapter.

(b) The agency record of the proceeding consists only of the following:

- (1) Notices of all proceedings.
- (2) Any prehearing order.
- (3) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- (4) Evidence received or considered.
- (5) A statement of matters officially noticed.
- (6) Proffers of proof and objections and rulings on them.
- (7) Proposed findings, requested orders, and exceptions.
- (8) The record prepared for the administrative law judge or for the ultimate authority or its designee under sections 28 through 31 of this chapter, at a hearing, and any transcript of the record considered before final disposition of the proceeding.
- (9) Any final order, nonfinal order, or order on rehearing.
- (10) Staff memoranda or data submitted to the administrative law judge or a person presiding in a proceeding under sections 28 through 31 of this chapter.
- (11) Matters placed on the record after an ex parte communication.

(c) Except to the extent that a statute provides otherwise, the agency record described by subsection (b) constitutes the exclusive basis for agency action in proceedings under this chapter and for judicial review of a proceeding under this chapter.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-34      Informal procedures; rules; final orders**

Sec. 34. (a) An agency is encouraged to develop informal procedures that are consistent with this article and make unnecessary more elaborate proceedings under this article.

(b) An agency may adopt rules, under IC 4-22-2, setting specific procedures to facilitate informal settlement of matters. The procedures must be consistent with this article.

(c) This section does not require any person to settle a matter under the agency's informal procedures.

(d) This subsection does not apply to a proceeding before the state ethics commission (created by IC 4-2-6-2) or a proceeding concerning a regulated occupation (as defined in IC 25-1-7-1), except for a proceeding concerning a water well driller (as described in IC 25-39-3) or an out of state mobile health care entity regulated by the state department of health. When a matter is settled without the need for more elaborate proceedings under this section, the ultimate authority or its designee shall issue the order agreed to by the parties as a final order under this article.

(e) When the final order referred to in subsection (d) involves the modification of a permit issued under IC 13, the administrative law judge:

(1) shall remand the permit to the issuing agency with instructions to modify the permit in accordance with the final order; and

(2) retains jurisdiction over any appeals of the modified permit.

Only those terms of the permit that are the subject of the final order shall be modified and subject to public notice and comment.

(f) Any petition for administrative review under this chapter concerning permit modification under subsection (e) is limited to only those terms of the permit modified in accordance with the final order issued under subsection (d).

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.16; P.L.32-2011, SEC.6.*

#### **IC 4-21.5-3-35 Additional procedural rights; rules**

Sec. 35. An agency may grant procedural rights to persons in addition to those conferred by this article so long as the rights conferred upon other persons by any law are not substantially prejudiced. The agency may adopt rules, under IC 4-22-2, concerning the nature and requirements of all procedures for requesting a proceeding or engaging in a proceeding, so long as the rules are not inconsistent with this article.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-36 Persons presiding in proceedings; violations**

Sec. 36. An individual who:

(1) is serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter; and

(2) knowingly or intentionally violates section 11, 12, or 13 of this chapter; commits a Class A misdemeanor.

*As added by P.L.18-1986, SEC.1.*

#### **IC 4-21.5-3-37 Aiding in violation**

Sec. 37. A person who:

(1) aids, induces, or causes an individual serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter to violate section 11, 12, or 13 of this chapter; and

(2) acts with the intent to:

(A) have the individual described in subdivision (1) disqualified from serving in a proceeding; or

(B) influence the individual described in subdivision (1) with respect to any issue in a proceeding;

commits a Class A misdemeanor.

*As added by P.L.18-1986, SEC.1.*

<b>IC 4-21.5-3.5</b>	<b>Chapter 3.5. Mediation</b>
4-21.5-3.5-1	Mediation guidelines; procedural rights; rules
4-21.5-3.5-2	Appropriateness of mediation; rules
4-21.5-3.5-3	Agreement to mediate
4-21.5-3.5-4	Immunity of mediator
4-21.5-3.5-5	Selection of proceeding for mediation; objections
4-21.5-3.5-6	Selection of mediator by agreement of parties
4-21.5-3.5-7	Application to mediate; list of approved mediators
4-21.5-3.5-8	Qualifications of mediator; agreement of parties on mediator
4-21.5-3.5-9	Guidelines for mediator selection if parties do not agree
4-21.5-3.5-10	Choice not to serve as mediator
4-21.5-3.5-11	Replacement of mediator
4-21.5-3.5-12	Effect if mediator chooses not to serve
4-21.5-3.5-13	Mediator ineligibility
4-21.5-3.5-14	Mediation costs
4-21.5-3.5-15	Continuance of proceedings
4-21.5-3.5-16	Duties of mediator
4-21.5-3.5-17	Individuals present at mediation
4-21.5-3.5-18	Confidential statements; nonpublic records
4-21.5-3.5-19	Mediator meetings with parties
4-21.5-3.5-20	Termination of mediation
4-21.5-3.5-21	Failure to reach agreement; requirements for agreement
4-21.5-3.5-22	Ability to mediate subsequent disputes
4-21.5-3.5-23	Conflicts of interest
4-21.5-3.5-24	Rules of evidence do not apply
4-21.5-3.5-25	Limitation of discovery
4-21.5-3.5-26	Mediation regarded as settlement negotiation
4-21.5-3.5-27	Confidential and privileged nature of mediation

**IC 4-21.5-3.5-1      Mediation guidelines; procedural rights; rules**

Sec. 1. (a) Except as provided in subsections (b) and (c), the mediation guidelines adopted by rule under this chapter must supplement the procedural rights established by this article.

(b) An agency described in IC 4-21.5-2-4 that is exempt from administrative orders and procedures required under IC 4-21.5 may adopt rules consistent with this chapter for the use of mediation to resolve proceedings.

(c) An agency may elect to use the mediation provisions of this chapter for determinations described in IC 4-21.5-2-6 that are exempt from the administrative orders and procedures required under IC 4-21.5.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-2      Appropriateness of mediation; rules**

Sec. 2. (a) For each type of administrative proceeding, the ultimate authority shall determine whether mediation is an appropriate means of alternative dispute resolution.

(b) For proceedings that an ultimate authority determines to be appropriate for mediation, the agency may adopt rules under IC 4-22-2 to implement this chapter. The rules, to the extent possible, shall not be inconsistent with Rule 2 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-3      Agreement to mediate**

Sec. 3. Before a proceeding is initiated, an agency and a person who may be the subject of an agency action may agree to use mediation to resolve a dispute.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-4      Immunity of mediator**

Sec. 4. A mediator, co-mediator, or team mediator appointed and acting under this chapter

has immunity in the same manner and to the same extent as a judge having jurisdiction in Indiana.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-5 Selection of proceeding for mediation; objections**

Sec. 5. (a) If a proceeding is of a type that has been identified as appropriate for alternative dispute resolution under section 2 of this chapter, the administrative law judge assigned to the proceeding may, on the administrative law judge's own motion or upon motion of any party, select the proceeding for mediation.

(b) Not more than fifteen (15) days after an order of selection for mediation, a party may object by filing a written objection specifying the grounds. The administrative law judge shall promptly consider an objection to mediation and any response to the objection and shall reconsider whether the proceeding is appropriate for mediation.

(c) In considering an order for mediation under this section, the administrative law judge shall consider:

- (1) the willingness of the parties to mutually resolve their dispute;
- (2) the ability of the parties to participate in the mediation process;
- (3) the need for discovery and the extent to which it has been conducted; and
- (4) any other factors that affect the potential for fair resolution of the dispute through the mediation process.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-6 Selection of mediator by agreement of parties**

Sec. 6. (a) If a proceeding is conducted by mediation, the administrative law judge assigned to the proceeding shall within fifteen (15) days after the date of the order for mediation make available to the parties, at no cost, a mediator who is qualified under section 8 of this chapter, or the parties may elect to use, at their own cost, an outside mediator who is:

- (1) qualified under section 8 of this chapter; and
- (2) approved by the administrative law judge assigned to the proceeding.

(b) If a mediator is not selected by agreement or choice under subsection (a), the administrative law judge assigned to the proceeding shall designate three (3) mediators from the approved list of mediators described in subsection 7(d) and allow fifteen (15) days for alternate striking by each side. The party initiating the proceeding shall strike first. The mediator remaining after the striking process is the mediator.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-7 Application to mediate; list of approved mediators**

Sec. 7. (a) A person, other than agency personnel, who wishes to serve as a mediator under this chapter shall file an application with the ultimate authority or its designee describing the type of proceeding in which the person desires to serve as a mediator and setting forth qualifications as required by section 8 of this chapter and the rules adopted under this chapter.

(b) A mediator must reapply if required by the rules.

(c) The administrative law judge assigned to a proceeding may allow mediation teams and co-mediators.

(d) The ultimate authority or its designee that uses mediation for dispute resolution shall maintain a list of approved mediators and the types of proceedings in which each mediator is authorized to serve. A mediator may be removed from the approved list for good cause, after a hearing.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-8 Qualifications of mediator; agreement of parties on mediator**

Sec. 8. (a) Except as provided in subsection (b), a person who applies to be a mediator under this chapter must be qualified as a mediator under Rule 2.5 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

(b) Subject to approval of the administrative law judge, the parties may agree on any person to serve as a mediator.

*As added by P.L.16-1996, SEC.1. Amended by P.L.114-2008, SEC.1.*

**IC 4-21.5-3.5-9 Guidelines for mediator selection if parties do not agree**

Sec. 9. If rules are adopted under section 2 of this chapter, the rules must include guidelines for selection of a mediator for the ultimate authority when there is no appropriate mediator or listed mediator available and the parties cannot agree on an unlisted mediator.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-10 Choice not to serve as mediator**

Sec. 10. A person selected to serve as a mediator under this chapter may choose not to serve for any reason.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-11 Replacement of mediator**

Sec. 11. At any time, a party to a proceeding may request that the administrative law judge replace the mediator of the proceeding for good cause.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-12 Effect if mediator chooses not to serve**

Sec. 12. If a mediator chooses not to serve or the administrative law judge decides to replace a mediator, the mediator selection process described in this chapter shall be repeated.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-13 Mediator ineligibility**

Sec. 13. A mediator may not be selected to mediate a proceeding if the mediator:

- (1) has an interest in the outcome of the proceeding;
- (2) is related to any of the parties or attorneys in the proceeding; or
- (3) is employed by any of the parties or attorneys involved in the proceeding, except that an employee of the agency involved may serve as a mediator if the employee of the agency:

(A) has not participated in the investigation or prosecution of the dispute; and

(B) does not otherwise have an interest in the outcome of the proceeding.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-14 Mediation costs**

Sec. 14. (a) If the parties to a proceeding elect to use an outside mediator, the costs of mediation must be paid as agreed by the parties. If there is no agreement of the parties, the administrative law judge assigned to the proceeding shall determine the mediation costs, if necessary, and equitably divide the mediation costs among the parties.

(b) To make the determination required by subsection (a), the administrative law judge shall consider the following:

- (1) The complexity of the litigation.
- (2) The skill levels needed to mediate the proceeding.
- (3) The ability of a party to pay.

(c) Mediation costs must be paid not more than thirty (30) days after the mediation is completed unless otherwise agreed among the mediator and the parties.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-15 Continuance of proceedings**

Sec. 15. If a proceeding is selected for mediation, the administrative law judge assigned to the proceeding shall continue the proceeding until the mediation is completed.  
*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-16 Duties of mediator**

Sec. 16. A mediator for a proceeding under this chapter shall:

- (1) inform the parties of the anticipated cost of mediation;
- (2) advise the parties that the mediator does not represent either or both of the parties;
- (3) define and describe the process of mediation to the parties;
- (4) disclose the nature and extent of any relationships with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest;
- (5) advise each of the parties to consider independent legal advice;
- (6) disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties;
- (7) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure;
- (8) inform the parties that they may introduce the written mediated agreement into evidence if the agreement is signed by all parties to the dispute;
- (9) advise the parties of the time, date, and location of the mediation at least ten (10) days in advance, unless a shorter period is agreed to by the parties; and
- (10) advise the parties of all persons whose presence at the mediation might facilitate settlement.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-17 Individuals present at mediation**

Sec. 17. (a) The parties and their attorneys, if any, must be present at any mediation session unless otherwise agreed. A mediator may allow nonparties to the dispute to be present at a mediation session if the parties agree.

(b) All parties, attorneys with settlement authority, representatives with settlement authority, and necessary individuals must be present at each mediation conference to facilitate settlement of a dispute, unless excused by the administrative law judge.

(c) Mediation sessions are not open to the public.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-18 Confidential statements; nonpublic records**

Sec. 18. (a) The attorney for a party to a proceeding may submit to the mediator a confidential statement of the proceeding, not to exceed ten (10) pages, before a mediation conference. The statement submitted under this section must include the following:

- (1) The legal and factual contentions of the party.
- (2) The factors considered in arriving at a settlement posture.
- (3) The settlement negotiations to date.

(b) A confidential statement under this section may be supplemented by exhibits or evidence that must be made available to the opposing party or the opposing party's counsel at least five (5) days before the mediation conference.

(c) A confidential statement is privileged and confidential unless an agreement by the parties to the contrary is provided to the mediator.

(d) If the mediation process does not result in settlement, any submitted confidential statement must be returned to the submitting attorney or party.

(e) Notwithstanding IC 4-21.5-4-6, the following are not public records or part of the agency record, gathered by the mediator in the course of mediation, in a proceeding:



- (1) A confidential statement.
- (2) Exhibits.
- (3) Evidence.
- (4) Other information.
- (5) Draft settlement documents.

*As added by P.L.16-1996, SEC.1.*

#### **IC 4-21.5-3.5-19 Mediator meetings with parties**

Sec. 19. In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the proceeding to one (1) or more parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. The mediator may share revealed settlement authority with other parties or their representatives.

*As added by P.L.16-1996, SEC.1.*

#### **IC 4-21.5-3.5-20 Termination of mediation**

Sec. 20. (a) As soon after mediation as practicable, the mediator shall report to the administrative law judge that the mediation process has been completed, terminated, or extended.

(b) The mediator shall terminate mediation whenever:

- (1) the mediator believes that continuation of the process would harm or prejudice one (1) or more of the parties; or
- (2) the ability or willingness of any party to participate meaningfully in mediation is lacking to the extent that a reasonable agreement is unlikely.

(c) After at least two (2) mediation sessions have been completed, any party may terminate mediation. The mediator may not state the reason for termination except when the termination is due to conflict of interest or bias on the part of the mediator, in which case another mediator may be assigned to the proceeding by the administrative law judge for the proceeding.

*As added by P.L.16-1996, SEC.1.*

#### **IC 4-21.5-3.5-21 Failure to reach agreement; requirements for agreement**

Sec. 21. (a) If the parties do not reach an agreement on any matter as a result of mediation, the mediator shall report the lack of an agreement without comment or recommendation to the administrative law judge assigned to the proceeding. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

(b) An agreement as a result of mediation must be in writing and signed by the parties. The agreement must be filed with the administrative law judge assigned to the proceeding. If the agreement is complete on all issues, it must be accompanied by a joint stipulation of disposition. Upon approval of a joint stipulation of disposition by the administrative law judge, it has the same force and effect as an agreed order approved by an administrative law judge from the agency involved.

(c) An approved joint stipulation of disposition under this chapter is considered a contract between the parties.

*As added by P.L.16-1996, SEC.1.*

#### **IC 4-21.5-3.5-22 Ability to mediate subsequent disputes**

Sec. 22. A person who has served as a mediator in a proceeding may act as a mediator in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the mediator on a periodic basis. However, the mediator shall decline to act in any capacity, except as a mediator, unless the subsequent association is clearly distinct

from the mediation issues.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-23 Conflicts of interest**

Sec. 23. A mediator is required to use an effective system to identify potential conflict of interest at the time of appointment to a proceeding as a mediator. The mediator may not subsequently act as an investigator or make any recommendations regarding the mediated proceeding. A person may not serve as an administrative law judge in a subsequent hearing of a matter in which the person served as a mediator.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-24 Rules of evidence do not apply**

Sec. 24. With the exception of privileged communications, the rules of evidence do not apply to mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-25 Limitation of discovery**

Sec. 25. Whenever possible, parties to a proceeding are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. By agreement of the parties, or as ordered by the administrative law judge, discovery may be deferred during mediation.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-26 Mediation regarded as settlement negotiation**

Sec. 26. (a) Mediation shall be regarded as a settlement negotiation. Evidence of furnishing or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim that was disputed as to either validity or amount is not admissible in a proceeding to prove liability for or invalidity of the claim or its amount.

(b) Evidence of conduct or statements made in the course of mediation is not admissible. However, this subsection does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of the mediation process. This subsection does not require exclusion when the evidence is offered for another purpose, such as bias or prejudice of a witness or negating a contention of undue delay.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-3.5-27 Confidential and privileged nature of mediation**

Sec. 27. (a) A mediator is not subject to process requiring disclosure of any matter discussed during the mediation. Matters discussed during mediation are confidential and privileged.

(b) The confidentiality requirement of subsection (a) may not be waived by the parties.

(c) An objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediator.

*As added by P.L.16-1996, SEC.1.*

**IC 4-21.5-4 Chapter 4. Special Proceedings; Emergency and Other  
Temporary Orders**

4-21.5-4-1	Circumstances warranting special proceedings
4-21.5-4-2	Procedures; orders
4-21.5-4-3	Notice; effectiveness of order
4-21.5-4-4	Hearings
4-21.5-4-5	Expiration of order; exception
4-21.5-4-6	Records

**IC 4-21.5-4-1 Circumstances warranting special proceedings**

Sec. 1. An agency may conduct proceedings under this chapter if:

- (1) an emergency exists; or
- (2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-4-2 Procedures; orders**

Sec. 2. (a) The agency shall issue the order under this chapter by one (1) of the following procedures:

- (1) Except as provided in IC 25-1-9-10, without notice or an evidentiary proceeding, by any authorized individual or panel of individuals.
- (2) After a hearing conducted by an administrative law judge.

(b) The resulting order must include a brief statement of the facts and the law that justifies the agency's decision to take the specific action under this chapter.

*As added by P.L.18-1986, SEC.1. Amended by P.L.43-1995, SEC.1.*

**IC 4-21.5-4-3 Notice; effectiveness of order**

Sec. 3. The agency shall give such notice as is practicable to persons who are required to comply with the order under this chapter. The order is effective when issued.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-4-4 Hearings**

Sec. 4. Upon a request by a party for a hearing on an order rendered under section 2(a)(1) of this chapter, the agency shall, as quickly as is practicable, set the matter for an evidentiary hearing. An administrative law judge shall determine whether the order under this chapter should be voided, terminated, modified, stayed, or continued.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-4-5 Expiration of order; exception**

Sec. 5. (a) Except as provided in subsection (c), an order issued under this chapter expires on the earliest of the following:

- (1) The date set in the order.
- (2) The date set by a statute other than this article.
- (3) The elapse of ninety (90) days.

(b) During the pendency of any related proceedings under IC 4-21.5-3, the agency responsible for the proceeding may renew the order for successive ninety (90) day periods unless a statute other than this article prohibits the renewal of the order.

(c) An order issued under this chapter and IC 15-17-6 does not expire.

*As added by P.L.18-1986, SEC.1. Amended by P.L.26-1997, SEC.1; P.L.2-2008, SEC.16.*

**IC 4-21.5-4-6 Records**

Sec. 6. The agency record in a proceeding under this chapter consists of any documents regarding the matter that were considered or prepared by the agency in a proceeding under

section 2(a)(1) of this chapter and, if a hearing is conducted under section 2(a)(2) or 4 of this chapter, the items described in IC 4-21.5-3-33.  
*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-5****Chapter 5. Judicial Review**

4-21.5-5-1	Exclusive means for judicial review; exceptions
4-21.5-5-2	Petition; persons entitled to judicial review
4-21.5-5-3	Standing
4-21.5-5-4	Exhaustion of administrative remedies; waiver of right to review
4-21.5-5-5	Time for filing
4-21.5-5-6	Venue
4-21.5-5-7	Petition; filing; contents
4-21.5-5-8	Service; rules of procedure
4-21.5-5-9	Stay of order pending court decision
4-21.5-5-10	Issues not raised before agency
4-21.5-5-11	Fact issues confined to record
4-21.5-5-12	Evidence; remand to agency for further factfinding
4-21.5-5-13	Transmittal of agency record; costs; corrections or additions
4-21.5-5-14	Burden of proof; standards of review
4-21.5-5-15	Disposition
4-21.5-5-16	Decisions on petitions; appeal

**IC 4-21.5-5-1****Exclusive means for judicial review; exceptions**

Sec. 1. Except as provided in IC 22-9 and IC 22-9.5, this chapter establishes the exclusive means for judicial review of an agency action. However, a subpoena, discovery order, or protective order issued under this article may be contested only in an action for civil enforcement under IC 4-21.5-6-2.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.17; P.L.14-1994, SEC.1.*

**IC 4-21.5-5-2****Petition; persons entitled to judicial review**

Sec. 2. (a) Judicial review is initiated by filing a petition for review in the appropriate court.

(b) Only a person who qualifies under:

- (1) section 3 of this chapter concerning standing;
- (2) section 4 of this chapter concerning exhaustion of administrative remedies;
- (3) section 5 of this chapter concerning the time for filing a petition for review;
- (4) section 13 of this chapter concerning the time for filing the agency record for review; and
- (5) any other statute that sets conditions for the availability of judicial review;

is entitled to review of a final agency action.

(c) A person is entitled to judicial review of a nonfinal agency action only if the person establishes both of the following:

- (1) Immediate and irreparable harm.
- (2) No adequate remedy exists at law. (The failure of a person to comply with the procedural requirements of this article may not be the basis for a finding of an inadequate remedy at law.)

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-5-3****Standing**

Sec. 3. (a) The following have standing to obtain judicial review of an agency action:

- (1) A person to whom the final agency action is specifically directed.
- (2) A person who was a party to the proceedings of the ultimate authority that led to the final agency action, including the agency whose order was under review in the proceeding.
- (3) A person eligible for standing under a law applicable to the final agency action.
- (4) A person otherwise aggrieved or adversely affected by the final agency action.

(b) A person has standing under subsection (a)(4) only if:

- (1) the final agency action has prejudiced or is likely to prejudice the interests of the person;

(2) the person:

(A) was eligible for an initial notice of an order or proceeding under this article, was not notified of the order or proceeding in substantial compliance with this article, and did not have actual notice of the order or proceeding before the last date in the proceeding that the person could object or otherwise intervene to contest the agency action; or

(B) was qualified to intervene to contest an agency action under IC 4-21.5-3-21(a), petitioned for intervention in the proceeding, and was denied party status;

(3) the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the final agency action.

*As added by P.L. 18-1986, SEC. 1. Amended by P.L. 35-1987, SEC. 18; P.L. 178-2002, SEC. 1; P.L. 219-2007, SEC. 5; P.L. 72-2014, SEC. 6.*

**IC 4-21.5-5-4 Exhaustion of administrative remedies; waiver of right to review**

Sec. 4. (a) A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review.

(b) A person who:

(1) fails to timely object to an order or timely petition for review of an order within the period prescribed by this article; or

(2) is in default under this article;

has waived the person's right to judicial review under this chapter.

*As added by P.L. 18-1986, SEC. 1.*

**IC 4-21.5-5-5 Time for filing**

Sec. 5. Except as otherwise provided, a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action that is the subject of the petition for judicial review was served.

*As added by P.L. 18-1986, SEC. 1.*

**IC 4-21.5-5-6 Venue**

Sec. 6. (a) Venue is in the judicial district where:

(1) the petitioner resides or maintains a principal place of business;

(2) the agency action is to be carried out or enforced; or

(3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

*As added by P.L. 18-1986, SEC. 1. Amended by P.L. 198-2001, SEC. 3; P.L. 219-2007, SEC. 6.*

**IC 4-21.5-5-7 Petition; filing; contents**

Sec. 7. (a) A petition for review must be filed with the clerk of the court.

(b) A petition for review must be verified and set forth the following:

(1) The name and mailing address of the petitioner.

(2) The name and mailing address of the agency whose action is at issue.

- (3) Identification of the agency action at issue, together with a copy, summary, or brief description of the agency action.
  - (4) Identification of persons who were parties in any proceedings that led to the agency action.
  - (5) Specific facts to demonstrate that the petitioner is entitled to obtain judicial review under section 2 of this chapter.
  - (6) Specific facts to demonstrate that the petitioner has been prejudiced by one (1) or more of the grounds described in section 14 of this chapter.
  - (7) A request for relief, specifying the type and extent of relief requested.
- As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.19.*

**IC 4-21.5-5-8 Service; rules of procedure**

Sec. 8. (a) A petitioner for judicial review shall serve a copy of the petition upon:

- (1) the ultimate authority issuing the order;
- (2) the ultimate authority for each other agency exercising administrative review of the order;
- (3) the attorney general; and
- (4) each party to the proceeding before an agency;

in the manner provided by the rules of procedure governing civil actions in the courts. If the ultimate authority consists of more than one (1) individual, service on the ultimate authority must be made to the secretary or chairperson of the ultimate authority.

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review to all other parties in any proceedings that led to the agency action.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-5-9 Stay of order pending court decision**

Sec. 9. (a) If a petition for judicial review concerns a matter other than an assessment or determination of tax due or claimed to be due the state, and the law concerning the agency whose order is being reviewed does not preclude a stay of the order by the court, the person seeking the review may seek, by filing a verified petition, an order of the court staying the action of the agency pending decision by the court. The court may enter an order staying the agency order pending a final determination if:

- (1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the order or determination appealed from is invalid or illegal; and
- (2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the order of the agency if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars (\$500).

(b) If a petition for review concerns a revocation or suspension of a license and the law governing the agency permits a staying of the action of the agency by court order pending judicial review, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the determination of the agency is approved on final determination, the revocation or suspension of the license immediately becomes effective.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.20.*

**IC 4-21.5-5-10 Issues not raised before agency**

Sec. 10. A person may obtain judicial review of an issue that was not raised before the agency, only to the extent that:

(1) the issue concerns whether a person who was required to be notified by this article of the commencement of a proceeding was notified in substantial compliance with this article; or

(2) the interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the agency action.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.21.*

**IC 4-21.5-5-11 Fact issues confined to record**

Sec. 11. Judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under section 12 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the agency.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-5-12 Evidence; remand to agency for further factfinding**

Sec. 12. (a) The court may receive evidence, in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:

(1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action.

(2) Unlawfulness of procedure or of decision-making process.

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the agency before final disposition of a petition for review with directions that the agency conduct further factfinding or that the agency prepare an adequate record, if:

(1) the agency failed to prepare or preserve an adequate record;

(2) the agency improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the agency action and the court determines that the new provision of law may control the outcome.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-5-13 Transmittal of agency record; costs; corrections or additions**

Sec. 13. (a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action, consisting of:

(1) any agency documents expressing the agency action;

(2) other documents identified by the agency as having been considered by it before its action and used as a basis for its action; and

(3) any other material described in this article as the agency record for the type of agency action at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible agency within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(c) Upon a written request by the petitioner, the agency taking the action being reviewed shall prepare the agency record for the petitioner. If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).



(d) Notwithstanding IC 5-14-3-8, the agency shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court, unless a person files with the court, under oath and in writing, the statement described by IC 33-37-3-2.

(e) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(f) The court may tax the cost of preparing transcripts and copies for the record:

(1) against a party to the judicial review proceeding who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(2) in accordance with the rules governing civil actions in the courts or other law.

(g) Additions to the record concerning evidence received under section 12 of this chapter must be made as ordered by the court. The court may require or permit subsequent corrections or additions to the record.

*As added by P.L.18-1986, SEC.1. Amended by P.L.11-1987, SEC.6; P.L.3-1989, SEC.24; P.L.98-2004, SEC.47.*

#### **IC 4-21.5-5-14 Burden of proof; standards of review**

Sec. 14. (a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 15 of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unsupported by substantial evidence.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.22.*

#### **IC 4-21.5-5-15 Disposition**

Sec. 15. If the court finds that a person has been prejudiced under section 14 of this chapter, the court may set aside an agency action and:

(1) remand the case to the agency for further proceedings; or

(2) compel agency action that has been unreasonably delayed or unlawfully withheld.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.23.*

#### **IC 4-21.5-5-16 Decisions on petitions; appeal**

Sec. 16. Decisions on petitions for review of agency action are appealable in accordance with the rules governing civil appeals from the courts.

*As added by P.L.18-1986, SEC.1.*

<b>IC 4-21.5-6</b>	<b>Chapter 6. Civil Enforcement</b>
4-21.5-6-1	Court order for enforcement
4-21.5-6-2	Enforcement of subpoenas, discovery orders, and protective orders
4-21.5-6-3	Civil actions
4-21.5-6-4	Naming violators required
4-21.5-6-5	Venue
4-21.5-6-6	Relief granted
4-21.5-6-7	Appeal

**IC 4-21.5-6-1 Court order for enforcement**

Sec. 1. In addition to any other remedy provided by law:

- (1) an agency in its own name;
- (2) an agency in the name of the state;
- (3) the attorney general in the name of the attorney general; or
- (4) the attorney general in the name of the state at the request of an agency;

may apply for a court order in a circuit or superior court to enforce an order issued under this article by a verified petition for civil enforcement.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-6-2 Enforcement of subpoenas, discovery orders, and protective orders**

Sec. 2. (a) This section applies only to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Any party to a proceeding before an agency who has obtained an order from an administrative law judge may apply for a court order in a circuit or superior court to enforce the subpoena or order issued by an agency by a verified petition for civil enforcement. Notice of an application under this section shall be given:

- (1) to the administrative law judge issuing the order;
- (2) to the attorney general; and
- (3) to each party to the proceeding before the agency;

by personal service or by the United States mail at the time the application is filed.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.24.*

**IC 4-21.5-6-3 Civil actions**

Sec. 3. (a) This section does not apply to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Nothing in this chapter limits or precludes civil action under IC 13-30-1.

(c) Any party to a proceeding concerning an agency's order may file a petition for civil enforcement of that order.

(d) The action may not be commenced under this section if:

- (1) less than sixty (60) days has elapsed since the petitioner gave notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;
- (2) the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same defendant; or
- (3) a petition for review of the same order has been filed and is pending in court.

(e) The petition under this section must name as defendants each alleged violator against whom the petitioner seeks civil enforcement.

(f) The agency whose order is sought to be enforced is not a party to an action under this section unless the agency moves to intervene. The court shall grant an agency's motion to intervene and shall allow the agency to intervene as a plaintiff or defendant.

(g) The agency whose order is sought to be enforced under this section may move to dismiss on the grounds that the petition fails to qualify under this section or that enforcement

would be contrary to the policy of the agency. The court shall grant the motion to dismiss unless the petitioner demonstrates that:

(1) the petition qualifies under this section; and

(2) the agency's failure to enforce its order is based on an exercise of discretion that is improper on one (1) or more of the grounds provided in IC 4-21.5-5-14.

(h) Except to the extent expressly authorized by law, a petition for civil enforcement filed under this section may not request, and the court may not grant, any monetary payment apart from taxable costs.

*As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.25; P.L.1-1996, SEC.26.*

**IC 4-21.5-6-4 Naming violators required**

Sec. 4. A petition for civil enforcement must name as defendants each alleged violator against whom the party seeks to obtain civil enforcement.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-6-5 Venue**

Sec. 5. Venue is determined in accordance with the rules governing civil actions in the courts.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-6-6 Relief granted**

Sec. 6. Upon a showing that a person has violated an order issued under this article, the court may grant:

(1) an injunction requested by any petitioner without bond;

(2) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 1 of this chapter without bond;

(3) a subpoena, discovery order, or protective order requested under section 2 of this chapter without a bond; or

(4) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 3 of this chapter with the bond specified by the court.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-6-7 Appeal**

Sec. 7. Decisions on petitions for civil enforcement are appealable in accordance with the rules governing civil appeals from the courts.

*As added by P.L.18-1986, SEC.1.*

**IC 4-21.5-7 Chapter 7. Environmental Adjudication**

4-21.5-7-1	"Director" defined
4-21.5-7-2	"Office" defined
4-21.5-7-3	Office of environmental adjudication; duties
4-21.5-7-4	Employees
4-21.5-7-5	Decisions reviewed by law judge
4-21.5-7-5.5	Consolidated proceedings
4-21.5-7-6	Qualifications of law judge and director; appointment of special judge
4-21.5-7-7	Powers of office
4-21.5-7-8	Proposed budget; payment of expenses
4-21.5-7-9	Receipt and acceptance of gifts

**IC 4-21.5-7-1 "Director" defined**

Sec. 1. As used in this chapter, "director" refers to the director of the office of environmental adjudication established by section 3 of this chapter.  
*As added by P.L.41-1995, SEC.2.*

**IC 4-21.5-7-2 "Office" defined**

Sec. 2. As used in this chapter, "office" refers to the office of environmental adjudication established by section 3 of this chapter.  
*As added by P.L.41-1995, SEC.2.*

**IC 4-21.5-7-3 Office of environmental adjudication; duties**

Sec. 3. (a) The office of environmental adjudication is established to review, under this article, agency actions of the department of environmental management, actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.

(b) The office of environmental adjudication shall:

(1) conduct adjudicatory hearings required to implement:

(A) air pollution control laws (as defined in IC 13-11-2-6), water pollution control laws (as defined in IC 13-11-2-261), environmental management laws (as defined in IC 13-11-2-71), and IC 13-19;

(B) rules of the board (as defined in IC 13-13-8-1) and the financial assurance board; and

(C) agency action of the department of environmental management; and

(2) notify a board referred to in subdivision (1)(B) of a final order of the office of environmental adjudication that interprets:

(A) a rule of the board; or

(B) a statute under which a rule of the board is authorized.

*As added by P.L.41-1995, SEC.2. Amended by P.L.1-1996, SEC.27; P.L.240-2003, SEC.1; P.L.99-2005, SEC.1; P.L.133-2012, SEC.6.*

**IC 4-21.5-7-4 Employees**

Sec. 4. The office consists of the following employees:

(1) A director appointed by the governor who may serve as an environmental law judge.

(2) Environmental law judges, employed by the director.

(3) Any other staff, employed by the director, that are necessary to carry out the functions of the office.

(b) In the event of a vacancy, the governor shall appoint the director based upon recommendations by a four member (4) panel. Not more than two (2) members of the panel may be affiliated with the same political party. The panel shall consist of:

(1) one (1) person, who shall serve as the chair of the panel, appointed by the chief justice of the supreme court of Indiana;

- (2) one (1) person appointed by the governor;
- (3) one (1) person appointed by the speaker of the house of representatives;
- (4) one (1) person appointed by the president pro tempore of the senate;

The panel shall nominate three (3) candidates for each vacancy and certify them to the governor as promptly as possible, but not later than sixty (60) days from the date a vacancy occurs. Not later than thirty (30) days after receipt of the panel's list of three (3) candidates, the governor may select one (1) candidate from the panel's list, or the governor may request that the panel nominate three (3) additional candidates. The panel shall meet whenever there is a vacancy in the director position.

*As added by P.L.41-1995, SEC.2.*

#### **IC 4-21.5-7-5 Decisions reviewed by law judge**

Sec. 5. (a) Except as provided in IC 14-10-2-2.5, an environmental law judge is the ultimate authority under this article for reviews of agency actions of the department of environmental management, actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.

(b) An environmental law judge under this chapter has the same authority and responsibilities as an administrative law judge.

*As added by P.L.41-1995, SEC.2. Amended by P.L.99-2005, SEC.2; P.L.84-2008, SEC.1; P.L.32-2011, SEC.7.*

#### **IC 4-21.5-7-5.5 Consolidated proceedings**

Sec. 5.5. A proceeding that is subject to the jurisdiction of both the office and the natural resources commission's division of hearings established under IC 14-10-2-2 may be consolidated under IC 14-10-2-2.5.

*As added by P.L.84-2008, SEC.2.*

#### **IC 4-21.5-7-6 Qualifications of law judge and director; appointment of special judge**

Sec. 6. (a) An environmental law judge hired after July 1, 1995, and the director must:

- (1) be attorneys admitted to the bar of Indiana;
- (2) have at least five (5) years of experience practicing administrative or environmental law in Indiana;
- (3) be independent of the department of environmental management; and
- (4) be subject to all provisions applicable to an administrative law judge under this article.

(b) The director may appoint a special environmental law judge. The special environmental law judge must meet the requirements of subsection (a).

*As added by P.L.41-1995, SEC.2. Amended by P.L.99-2005, SEC.3; P.L.100-2012, SEC.5.*

#### **IC 4-21.5-7-7 Powers of office**

Sec. 7. The office may:

- (1) adopt forms; and
- (2) establish procedural rules IC 4-22-2;

consistent with this article.

*As added by P.L.41-1995, SEC.2.*

#### **IC 4-21.5-7-8 Proposed budget; payment of expenses**

Sec. 8. (a) The director shall prepare the proposed budget for the office.

(b) The expenses of the office shall be paid from money allotted to the office of environmental adjudication to maintain the office.

*As added by P.L.41-1995, SEC.2. Amended by P.L.25-1997, SEC.2.*

**IC 4-21.5-7-9            Receipt and acceptance of gifts**

Sec. 9. The office, on behalf of the state, may accept and receive from any source gifts and other funds that are made available to the state for the purposes of this chapter.

*As added by P.L.25-1997, SEC.3.*

## Brune, Adrienne

---

**From:** Brune, Adrienne  
**Sent:** Thursday, January 04, 2018 4:50 PM  
**To:** 'John Bucy'  
**Subject:** RE: Whole Woman's Health Alliance (South Bend)

Hi John:

At this time, the ISDH has no further information outside of what's in the *Notice of License Application Denial*. The appeal rights are outlined within that notice. If you have questions on that process, I'm happy to answer those now.

Adrienne

**ADRIENNE BRUNE**  
*Attorney*  
*Agency Ethics Officer*

*Office of Legal Affairs*  
*Indiana State Department of Health*  
317.233.7270 office  
317.233.7143 fax  
[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**From:** John Bucy [mailto:[john@johnbucy.com](mailto:john@johnbucy.com)]  
**Sent:** Thursday, January 04, 2018 2:56 PM  
**To:** Brune, Adrienne <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Subject:** Re: Whole Woman's Health Alliance (South Bend)

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Adrienne,

Is there anyone I can talk to bout this? We answered the question.

John

Bucy & Associates, PLLC

6633 Hwy. 290 East, Suite 104  
Austin, Texas 78723  
Telephone: (512) 291-6505  
Facsimile: (512) 291-6558  
Email: [john@johnbucy.com](mailto:john@johnbucy.com)

---

**From:** "Brune, Adrienne" <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Date:** Wednesday, January 3, 2018 at 7:58 AM  
**To:** "[john@johnbucy.com](mailto:john@johnbucy.com)" <[john@johnbucy.com](mailto:john@johnbucy.com)>  
**Subject:** Whole Woman's Health Alliance (South Bend)

Mr. Bucy:

Attached is a courtesy copy of the *Notice of License Application Denial* being sent on today's date via certified mail to Whole Woman's Health Alliance, 1812 Centre Creek Drive, Suite 205, Austin, Texas 78754. Certified copy to Bucy & Associates, PLLC to follow.

Regards,

**ADRIENNE BRUNE**  
*Attorney*  
*Agency Ethics Officer*

*Office of Legal Affairs*  
*Indiana State Department of Health*  
317.233.7270 office  
317.233.7143 fax  
[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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**Brune, Adrienne**

---

**From:** Clare Deitchman <cdeitchmanlaw@att.net>  
**Sent:** Monday, January 29, 2018 8:55 AM  
**To:** Brune, Adrienne; john@johnbucy.com  
**Cc:** ISDH Court Administrator  
**Subject:** Fw: Assignment Acknowledgement ACL-000132-18  
**Attachments:** 20180126154455531.pdf

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Counsel,

I have been assigned as the Administrative Law Judge (ALJ) to hear the appeal of the license denial for Whole Woman's Health Alliance. I would like to set this for a pre-hearing conference call for purposes of scheduling. Would the two of you be available for a brief conference call on Monday, February 12, 2018 at say at 9:30 EST which would be 8:30 (CST) (Austin Texas Time).

If so, I will send out a Notice in today's mail. If that does not work for you, please provide alternative dates during that week.

Clare Deitchman

**CONFIDENTIALITY NOTICE:** This e-mail contains information from the law firm of J. Clare Deitchman, LLC that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. You are prohibited from copying, distributing or otherwise using this information if you are not the intended recipient. If you have received this e-mail in error, please notify us immediately by return e-mail and delete this e-mail and all attachments from your system. Thank you!

----- Forwarded Message -----

**From:** "Miller, Rochelle" <RocMiller@isdh.IN.gov>  
**To:** Clare Deitchman <cdeitchmanlaw@att.net>  
**Cc:** "Brune, Adrienne" <ABrune@isdh.IN.gov>; "Carroll, Bart" <BCarroll@isdh.IN.gov>; ISDH Court Administrator <CourtAdministrator@isdh.IN.gov>; "Snyder, Randall" <RSnyder1@isdh.IN.gov>; "Whitson, Terry" <TWhitson@isdh.IN.gov>; "Gilliland, Karen" <Karen.Gilliland@fssa.IN.gov>  
**Sent:** Friday, January 26, 2018 3:51 PM  
**Subject:** Assignment Acknowledgement ACL-000132-18

Good afternoon Judge Deitchman,

Please see the attached assignment acknowledgement regarding Whole Woman's Health Alliance's license application denial. Hard copy with attachment to follow via mail.

Thank you,

ROCHELLE MILLER  
Court Administrator  
Office of Legal Affairs

Indiana State Department of Health  
317.233.7540 office  
317.234.6278 fax  
[rocmiller@isdh.in.gov](mailto:rocmiller@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)

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Eric J. Holcomb  
Governor

Kristina Box, MD, FACOG  
State Health Commissioner

January 26, 2018

Judge Clare Deitchman  
Administrative Law Judge  
748 East Bates Street, Suite 105  
Indianapolis, Indiana 46202

RE: Petition for Review of License Application Denial  
**Whole Woman's Health Alliance**  
**Cause No.: ACL-000132-18**

Dear Judge Deitchman:

### **ASSIGNMENT ACKNOWLEDGEMENT**

You are hereby notified that you have been selected to serve as an Administrative Law Judge in this matter. If for any reason you are unable to accept this assignment, please sign at the appropriate line at the end of this Acknowledgement and return all materials to the Court Administrator.

Enclosed herein you will find a copy of:

1. *Notice of License Application Denial* issued by ISDH on January 3, 2018.
2. *Petition for Review of License Application Denial* filed by Attorney John H. Bucy, II on January 22, 2018.



2 North Meridian Street • Indianapolis, IN 46204  
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[www.statehealth.in.gov](http://www.statehealth.in.gov)

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## TERMS AND CONDITIONS

### A. DUTIES OF ALJ FOR ADMINISTRATIVE HEARINGS

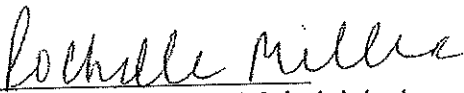
1. Conduct of Administrative Hearings The ALJ shall conduct an administrative evidentiary hearing, as well as all other preliminary and subsequent matters, attending thereto, in accordance with IC 4-21.5, and all other pertinent statutes, rules, and/or case law in **Cause No. ACL-000132-18**.
2. Standards of Conduct The ALJ shall conduct the entire hearing process with the highest professional standards and ethical considerations in order to afford all parties an equitable opportunity for a fair hearing. Said standards shall consist of, at a minimum, those specific provisions contained in IC 4-21.5 and IC 4-22-2 as well as all other reasonable and appropriate efforts to ensure the integrity of the Department's hearing process. The ALJ shall notify the Administrative Coordinator for the Department, as well as the parties of any possible conflict as soon as the matter is known to the ALJ.
3. Schedule Hearings The ALJ shall be responsible for scheduling this hearing and related matters in facilities furnished by the Department unless agreed otherwise by the parties. Notice of scheduling shall be sent to the parties by the ALJ with a reasonable notice period for the parties' convenience. Unilateral requests for continuances may be granted at the discretion of the ALJ.
4. Communication With Parties The ALJ shall not communicate unilaterally, except as to scheduling matters, with any party concerning the administrative hearing. The ALJ shall not participate in any settlement discussions with the parties but shall afford the parties every reasonable opportunity to resolve any matter in controversy in an amicable manner.
5. ALJ's Decision The ALJ shall issue a **recommended** decision in each administrative hearing no later than 30 days after the conclusion of the evidentiary hearing. Should the ALJ order post-hearing briefs from the parties, then the 30 day period shall commence after receipt of the briefs.  
  
The ALJ's **recommended** decision in the administrative hearing shall contain legally sufficient "findings of fact" and "conclusions of law" which clearly inform the reader of all issues in dispute (substantive as well as procedural) and the reasoning process by which said issues have been disposed of by the ALJ.
6. Maintenance of Record The ALJ shall establish and maintain a record during the administrative cause which shall contain the items referred to in IC 4-21.5-3-33. Copies of all pleadings, notices, etc., shall be filed with the Administrative Coordinator, Indiana State Department of Health whether hand-delivered or by mail. The record shall be submitted to the Department within 15 days of the final disposition of the matter.

In the event that an appeal is taken, and a transcript must be prepared, said record, including the transcript, may be returned by the Department to the ALJ for review and certification by the ALJ for accuracy and authenticity.

7. Claim Vouchers The ALJ shall account for each one-tenth (1/10) of an hour spent on discharging his or her responsibilities for the hearing. Claim vouchers and any other forms necessary to make proper reimbursement may be obtained from the Administrative Coordinator for the Department. Completed claim vouchers and any other necessary forms must be sent to the Administrative Coordinator to be processed.

## **B. DUTIES OF THE DEPARTMENT**

1. Reimbursement The Department shall reimburse the ALJ for services rendered for this hearing at the rate of fifty-five dollars (\$55.00) per hour. The ALJ's claim voucher and any other necessary forms shall be reviewed and processed immediately upon receipt and a check shall issue for the Department within a reasonable period thereafter.
2. Physical Facilities The Department shall furnish adequate physical facilities for the hearing although actual scheduling of the hearing is the ALJ's responsibility.
3. Record Making The Department shall furnish equipment for purposes of maintaining a record of the hearing. A court reporter may be used if requested by either of the parties. The Department will not provide a transcript to the ALJ for purposes of reviewing the evidence prior to writing the decision.
4. Expenses The ALJ shall also be reimbursed for certain expenses incurred in the discharge of his/her duties in this cause. The reimbursable items of expense shall be limited to all necessary postage and long distance telephone calls. All other expenses are the responsibility of the ALJ.

  
Rochelle Miller, Court Administrator  
Office of Legal Affairs/ISDH

cc: Randy Snyder, Director, Acute Care Division, ISDH  
Terry L. Whitson, Assistant Commissioner, Health Care Quality and  
Regulatory Services, ISDH  
State Ombudsman, FSSA  
Adrienne Brune, Staff Attorney, Office of Legal Affairs  
Indiana State Department of Health  
2 N. Meridian Street, 3160  
Indianapolis, Indiana 46204  
Bart Carroll, Litigation Chief, Office of Legal Affairs  
Indiana State Department of Health  
2 N. Meridian Street, 3160  
Indianapolis, Indiana 46204  
John H. Bucy, II  
Bucy & Associates, PLLC  
6633 Highway 290 East, Suite 104  
Austin, Texas 78723



Eric J. Holcomb  
Governor

Kristina Box, MD, FACOG  
State Health Commissioner

CERTIFIED MAIL

Re: Licensure Application

NOTICE OF LICENSE APPLICATION DENIAL

Whole Woman's Health Alliance  
1812 Centre Creek Drive, Suite 205  
Austin, Texas 78754

To Whom It May Concern:

The Commissioner of the Indiana State Department of Health (hereinafter referred to as "Commissioner"), pursuant to Ind. Code § 16-21-2-11, Ind. Code § 4-21.5-3-5, and 410 IAC 26, hereby issues this *Notice of License Application Denial* to Whole Woman's Health Alliance ("WWHA" or "Applicant").

On August 11, 2017, the Indiana State Department of Health (the "Department") received an *Application for License to Operate an Abortion Clinic* from WWHA. On September 21, 2017, the Department requested additional information based on discrepancies noted in WWHA's application. On October 6, 2017, the Department received a revised application from WWHA. After reviewing the revised application, the Department requested additional information to determine compliance with 410 IAC 26. In response to the Department's request to list all of the abortion and health care facilities currently operated by WWHA, its parent, affiliate, and subsidiary organizations, WWHA failed to disclose, concealed, or omitted information related to additional clinics.

Based upon the Department's review, the Commissioner finds WWHA failed to meet the requirement that the Applicant is of reputable and responsible character and the supporting documentation provided inaccurate statements or information. See 410 IAC 26-2-5. You are hereby notified that the Commissioner has **DENIED** the license application of WWHA dated August 11, 2017 (supplemented on October 6, 2017 and December 8, 2017).

A person may not provide abortion services unless the person holds a license issued by the Indiana State Department of Health. A person who knowingly or intentionally operates or advertises the operation of an unlicensed abortion clinic commits a Class A misdemeanor. Ind. Code § 16-21-2-10. Ind. Code § 16-21-2-2.5.

If WWHA wishes to seek administrative review of the *Notice of License Application Denial* pursuant to Indiana Code 4-21.5-3-5, it must file a petition for review within eighteen (18) days after this *Notice of Licensure Application Denial* is served. The petition for review and petition of stay of effectiveness must be postmarked no later than **January 23, 2018**.



2 North Meridian Street • Indianapolis, IN 46204  
317.233.1325 tdd 317.233.5577  
[www.statehealth.in.gov](http://www.statehealth.in.gov)

To promote and provide  
essential public health services.

The petition for review and petition of stay of effectiveness must be in writing and must include facts demonstrating that:

The petitioner is a person to whom the order is specifically directed;  
The petitioner is aggrieved or adversely affected by the order; or  
The petitioner is entitled to review under any law.

If the petition for review and petition for stay of effectiveness is not filed timely, this *Notice of License Application Denial* becomes a **FINAL ORDER**.


Any Petition for review should be submitted in writing to:

Court Administrator  
Office of Legal Affairs, #3H  
Indiana State Department of Health  
2 North Meridian Street  
Indianapolis, IN 46204-3006

So ordered this 3<sup>rd</sup> day of JANUARY, 2018.

Respectfully,

KRISTINA BOX, MD, FACOG  
STATE HEALTH COMMISSIONER

By:   
Terry L. Whitson  
Assistant Commissioner  
Health Care Quality & Regulatory Commission

CC: Preston Black, Office of Legal Affairs  
Bucy & Associates, PLLC c/o John Bucy, II  
File



# Bucy & Associates, PLLC

6633 Highway 290 East, Suite 104  
Austin, Texas 78723  
Phone: (512) 291-6505  
Fax: (512) 291-6558  
E-Mail: john@johnbucy.com  
Indiana State Department of Health  
Office of Legal Affairs

JAN 22 2018

FILED

January 22, 2018

Court Administrator  
Office of Legal Affairs, #3H  
Indiana State Department of Health  
2 North Meridian Street  
Indianapolis, IN 46204-3006

**VIA CERTIFIED MAIL:**  
7016 3010 0000 2601 3662

*PETITION FOR REVIEW OF LICENSE APPLICATION DENIAL  
BY INDIANA STATE DEPARTMENT OF HEALTH*

**Applicant Information:**

Whole Woman's Health Alliance  
1812 Centre Creek Drive, Suite 205  
Austin, Texas 78734

**Representative's Name (Person Submitting the Appeal):**

John H. Bucy, II  
Bucy & Associates, PLLC  
6633 Highway 290 East, Suite 104  
Austin, Texas 78723  
Telephone Number: (512) 731-2638

**Background Information:**

Whole Woman's Health Alliance (the "Applicant") filed an Application for License to Operate an Abortion Clinic on August 11, 2017. On October 6, 2017, the Applicant filed a revised application in response to additional information requested by the Indiana State Department of Health (the "Department").

By Notice of License Application Denial dated January 3, 2018, the Department denied the Application of Applicant (the "Notice").

**Reason for Denial:**

In paragraph 2 of the Notice, the Department determined:

**"In response to the Department's request to list all of the abortion and health care facilities currently operated by WWHA, its parent, affiliate, and**

**subsidiary organizations, WWHA failed to disclose, concealed or omitted information related to additional clinics."**

The Department relied on this determination to find that the Applicant **"...failed to meet the requirement that the Applicant is of reputable and responsible character and the supporting documentation provided inaccurate statements or information. See 410 IAC 26-2-5."**

**Response of Applicant:**

**Factual Dispute:** The factual dispute relates to Requests 1 and 2 submitted by the Department to the Applicant on October 6, 2017 and the responses submitted by the Applicant to the Department on December 8, 2017. For ease of reference, the requests and the responses of the Applicant follow:

**1. Provide a complete ownership structure or description pertaining to the applicant, including, but not limited to, any individuals and/or any parent, affiliate or subsidiary organizations. Please list full legal names and addresses, and for entities, list the type of entity and the state of incorporation/organization.**

**Response:** Whole Woman's Health Alliance ("WWHA") is a Texas nonprofit corporation. It does not have members. Management of the affairs of WWHA is vested in the Board of Directors. Since WWHA is a nonprofit corporation it does not have any owners.

WWHA operates a clinic in Austin, Texas. The address of the clinic is 8401 North IH 35, Suite 200, Austin, Texas 78753. It is licensed as an Abortion Facility by the Texas Department of State Health Services Regulatory Licensing Unit. Its license number is 140013.

WWHA has recently purchased a clinic in the State of Virginia. The clinic address is 2321 Commonwealth Drive, Charlottesville, Virginia, 22901. The license number is AF-0020.

WWHA has entered into a management agreement with Whole Woman's Health, LLC (the "Management Company"). The Management Company will provide certain designated management services to WWHA. The Management Company provides management services to numerous clinics across the United States. The Management Company is a Texas limited liability company.

Some of the Board Members of WWHA are affiliated directly or indirectly with the Management Company, but the majority of the Board Members are independent.

**2. Provide a list of all the abortion and health care facilities currently operated by applicant, including its parent, affiliate or subsidiary organizations.**

**Response:** Please refer to the answer to the first Question.

**Arguments of Applicant (Factual Matters):** The Applicant did not conceal or mislead the Department regarding the clinics operated by the Applicant, its parent, affiliate or subsidiary organizations. As stated in the above responses, the Applicant is a Texas nonprofit corporation. It does not have members. Management of the affairs of WWHA is vested in the Board of Directors. Nonprofit entities, including the Applicant, do not have shareholders or owners. The Applicant does not own shares, membership interests or any other type of ownership interest in any entity. Consequently, the Applicant does not have a parent or subsidiary organization.

The Applicant in its response disclosed all of the clinics that it operates, which are located in Texas and Virginia. It also disclosed that it had entered into a management agreement with Whole Woman's Health, LLC—an independent legal entity that is distinct from the Applicant—and that Whole Woman's Health, LLC provides "management services to numerous clinics across the U.S." Applicant's Responses of Dec. 8, 2017. The Applicant did not list the other clinics managed by Whole Woman's Health, LLC, because they are not operated by Whole Woman's Health Alliance, nor are they parent, affiliate, or subsidiary organizations. To the contrary, those other clinics are independent corporations that are not controlled by the Applicant, and the Applicant has no financial or other interest in those clinics.

Although not responsive to the Department's Requests, a list of the other clinics managed by Whole Woman's Health, LLC is provided in Exhibit "A", attached hereto and incorporated herein by reference.

The Department was not specific about its basis for denying the Applicant's Application, but it is possible that the Department considers Whole Woman's Health, LLC to be an affiliate of the Applicant.

The Indiana Code defines "affiliate" as "an entity that directly or indirectly controls, is controlled by, or is under common control with" another entity, where "[c]ontrol includes the power to select the corporation's board of directors." Ind. Code § 23-17-21-2; *accord* Ind. Code § 23-1-43-1. The Applicant does not control and is not controlled by any other entity. As a Texas nonprofit corporation, the Applicant has scrupulously maintained its independent status. While Whole Woman's Health, LLC provides certain management services to the Applicant pursuant to a contractual agreement, it does not control and is not controlled by the Applicant, nor are the two companies under common control by a third party. The other clinics managed by Whole Woman's Health, LLC are independent corporations that similarly do not control, are not controlled by, and are not subject to common control with the Applicant.

Court Administrator  
January 22, 2018  
Page 4 of 4

Bucy & Associates, PLLC

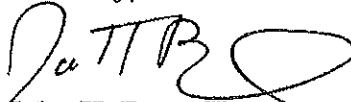
**Arguments of Applicant (Legal Matters):** The Applicant did not conceal or mislead the Department, nor provide inaccurate statements or information; consequently, a finding that Applicant **"...failed to meet the requirement that the Applicant is of reputable and responsible character and the supporting documentation provided inaccurate statements or information"** is not supported by the facts in this case.

The Applicant acted in good faith and was open and responsive. The Applicant also provided complete and accurate information to the Department. If the Department had questions concerning the Applicant's relationship to Whole Woman's Health, LLC and/or the other clinics managed by that company, it could have informed the Applicant, and the Applicant would have willingly provided additional information.

It is clear that the Applicant is of reputable and responsible character and if in the view of the Department the answer was not fully responsive it is a result of the Department's misunderstanding and not an attempt of the Applicant to mislead or conceal information.

If you have any questions feel free to contact me at the above-mentioned number.

Sincerely,



John H. Bucy, II

Exhibit "A"

Whole Woman's Health of the Twin Cities, LLC

Whole Woman's Health of Peoria, LLC

Whole Woman's Health of Baltimore, LLC

Whole Woman's Health of Fort Worth, LLC

Whole Woman's Health of San Antonio, LLC

Whole Woman's Health of McAllen, LLC

Bucy & Associates, PLLC

6633 Highway 290 East, Suite 104  
Austin, Texas 78723

**RETURN RECEIPT  
REQUESTED**

DESIGNER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS FOLD AT NOTED LINE  
**CERTIFIED MAIL**



7016 3010 0000 2601 3662



1000



46204

U.S. POSTAGE  
PAID  
AUSTIN, TX  
JAN 22, 18  
AMOUNT  
**\$6.91**  
R2305H126381-04

Indiana State Department of Health

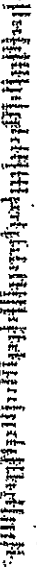
Court Administrator

Office of Legal Affairs, #3H

2 North Meridian Street

Indianapolis, IN 46204-3006

46204-3006 0010



**Brune, Adrienne**

---

**From:** Miller, Rochelle  
**Sent:** Friday, January 26, 2018 3:51 PM  
**To:** Clare Deitchman  
**Cc:** Brune, Adrienne; Carroll, Bart; ISDH Court Administrator; Snyder, Randall; Whitson, Terry; Gilliland, Karen  
**Subject:** Assignment Acknowledgement ACL-000132-18  
**Attachments:** 20180126154455531.pdf

Good afternoon Judge Deitchman,

Please see the attached assignment acknowledgement regarding Whole Woman's Health Alliance's license application denial. Hard copy with attachment to follow via mail.

Thank you,

ROCHELLE MILLER  
Court Administrator  
Office of Legal Affairs  
Indiana State Department of Health  
317.233.7540 office  
317.234.6278 fax  
rocmiller@isdh.in.gov  
www.StateHealth.in.gov

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## Brune, Adrienne

---

**From:** Dipti Singh <dsingh@lawyeringproject.org>  
**Sent:** Tuesday, February 13, 2018 2:06 PM  
**To:** Clare Deitchman; Carroll, Bart; Brune, Adrienne  
**Cc:** ISDH Court Administrator; kjack@jacklawoffice.com; Stephanie Toti  
**Subject:** RE: Verified Petitions for Temporary Admission to Appear

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Thank you, Judge Deitchman.

We look forward to working with everyone, as well.

Sincerely,

Dipti Singh

**From:** Clare Deitchman [mailto:cdeitchmanlaw@att.net]  
**Sent:** Tuesday, February 13, 2018 10:49 AM  
**To:** Carroll, Bart <BCarroll@isdh.IN.gov>; Brune, Adrienne <ABrune@isdh.IN.gov>  
**Cc:** ISDH Court Administrator <CourtAdministrator@isdh.IN.gov>; kjack@jacklawoffice.com; Dipti Singh <dsingh@lawyeringproject.org>; Stephanie Toti <stoti@lawyeringproject.org>  
**Subject:** Re: Verified Petitions for Temporary Admission to Appear

Counsel,

Thank you for the quick response. According to Admission Rule 3 the out of state counsel need an order from the "court" which they must then file. I will draft and have that sent out tomorrow.

Clare Deitchman  
Administrative Law Judge

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**From:** "Carroll, Bart" <BCarroll@isdh.IN.gov>  
**To:** Clare Deitchman <cdeitchmanlaw@att.net>; "Brune, Adrienne" <ABrune@isdh.IN.gov>  
**Cc:** ISDH Court Administrator <CourtAdministrator@isdh.IN.gov>; "kjack@jacklawoffice.com" <kjack@jacklawoffice.com>; "dsingh@lawyeringproject.org" <dsingh@lawyeringproject.org>; "stoti@lawyeringproject.org" <stoti@lawyeringproject.org>  
**Sent:** Tuesday, February 13, 2018 1:44 PM  
**Subject:** RE: Verified Petitions for Temporary Admission to Appear

Good day, Judge Deitchman,

We do not object. And, we look forward to working with Petitioner's counsel.

Sincerely,

**BART CARROLL, JD**  
***Litigation Chief***

*Office of Legal Affairs  
Indiana State Department of Health  
317.233.7766 office  
317.234.6278 fax  
[bcarroll@isdh.in.gov](mailto:bcarroll@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)*



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**From:** Clare Deitchman [<mailto:cdeitchmanlaw@att.net>]  
**Sent:** Tuesday, February 13, 2018 1:23 PM  
**To:** Carroll, Bart <[BCarroll@isdh.IN.gov](mailto:BCarroll@isdh.IN.gov)>; Brune, Adrienne <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Cc:** ISDH Court Administrator <[CourtAdministrator@isdh.IN.gov](mailto:CourtAdministrator@isdh.IN.gov)>; [kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com); [dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org); [stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)  
**Subject:** Verified Petitions for Temporary Admission to Appear

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Counsel,

Does the State object to the Temporary Admission of Counsel Singh or Counsel Toti appearing on behalf of Whole Woman's Health Alliance in Cause No. ACL-000132-18? If you do, do you intend to file an objection withing fifteen (15) days?

Clare Deitchman  
Administrative Law Judge

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## Brune, Adrienne

---

**From:** Dipti Singh <dsingh@lawyeringproject.org>  
**Sent:** Thursday, March 01, 2018 6:22 PM  
**To:** Carroll, Bart; Brune, Adrienne  
**Cc:** Stephanie Toti; kjack@jacklawoffice.com; john@johnbucy.com  
**Subject:** RE: Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18

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Bart and Adrienne,

Whole Woman's Health Alliance waives the 15 day period to object to the Department's non-party requests referenced in your e-mail of February 23, 2018. We reserve the right to object to any future non-party requests.

Sincerely,  
Dipti

**From:** Dipti Singh  
**Sent:** Friday, February 23, 2018 2:04 PM  
**To:** 'Carroll, Bart' <BCarroll@isdh.IN.gov>; 'Brune, Adrienne' <ABrune@isdh.IN.gov>  
**Cc:** Stephanie Toti <stoti@lawyeringproject.org>; 'kjack@jacklawoffice.com' <kjack@jacklawoffice.com>; 'john@johnbucy.com' <john@johnbucy.com>  
**Subject:** RE: Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18

Good evening, Bart,

Thank you for sending these requests. We will review and get back to you next week about your request to waive the 15 day period to object.

Sincerely,  
Dipti

**From:** Carroll, Bart [<mailto:BCarroll@isdh.IN.gov>]  
**Sent:** Friday, February 23, 2018 1:19 PM  
**To:** [john@johnbucy.com](mailto:john@johnbucy.com); [kJack@jacklawoffice.com](mailto:kJack@jacklawoffice.com); Stephanie Toti <[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)>; Dipti Singh <[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)>  
**Cc:** Brune, Adrienne <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Subject:** Whole Woman's Health Alliance v. ISDH, Cause No. ACL-000132-18

Good afternoon, John, Kathrine, Stephanie, and Dipti,

Please find attached electronic copies of the discovery requests in this matter. Please let us know if you are willing to waive the 15 day period to object to the non-party requests, and we will send them out.

Thank you,

**BART CARROLL, JD**

*Litigation Chief*

Office of Legal Affairs  
Indiana State Department of Health  
317.233.7766 office  
317.234.6278 fax  
[bcarroll@isdh.in.gov](mailto:bcarroll@isdh.in.gov)  
[www.StateHealth.in.gov](http://www.StateHealth.in.gov)



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## Brune, Adrienne

---

**From:** Brune, Adrienne  
**Sent:** Friday, April 20, 2018 2:20 PM  
**To:** 'Dipti Singh'; Kathrine D. Jack, Jack Law Office LLC; Stephanie Toti  
**Cc:** Carroll, Bart  
**Subject:** Whole Woman's Health ACL-000132-18: Request for Production & Interrogatory Modification Proposal Summary

Good afternoon:

I know we discussed this telephonically earlier in the week, but I wanted to summarize our Request for Production modifications for your consideration. In addition to the completion of the answers to Interrogatory #8, the ISDH is agreeable to the following changes stated below:

1. RFP #1: Copies of all records, notes, correspondence, emails, written communication, minutes, review, memorandum, voice mail recordings, other audio recordings, and other documents and electronic records with any information concerning potential conflicts of interest of any member of the Board of Directors with any of the following organizations: Whole Woman's Health of McAllen, LLC; Whole Woman's Health of San Antonio, LLC; Whole Woman's Health of Fort Worth, LLC; Whole Woman's Health of the Twin Cities, LLC; Whole Woman's Health of Peoria, LLC; Whole Woman's Health of Beaumont, LLC; Whole Woman's Health of Charlottesville, Whole Woman's Health of Austin; and Whole Woman's Health of Baltimore, LLC.
2. RFP #2: If not all documents have been produced, please produce copies of every document and record of any kind identified in the Indiana State Department of Health's *First Set of Interrogatories* to Whole Woman's Health Alliance, Interrogatory No. 8.
3. RFP #3: A copy of each and every operating agreement, member agreement, or any other agreement between members concerning Whole Woman's Health Alliance and Whole Woman's Health, LLC for the period from January 1, 2016 through December 31, 2017.
4. RFP #4: All meeting minutes of the Board of Directors for the period from January 1, 2016 through December 31, 2017 relating to any of the following: Whole Woman's Health of McAllen, LLC; Whole Woman's Health of San Antonio, LLC; Whole Woman's Health of Fort Worth, LLC; Whole Woman's Health of the Twin Cities, LLC; Whole Woman's Health of Peoria, LLC; Whole Woman's Health of Beaumont, LLC; Whole Woman's Health of Charlottesville, Whole Woman's Health of Austin; and Whole Woman's Health of Baltimore, LLC.
5. RFP #5: All memoranda, interoffice communications, records, notes, correspondence, emails, written communication, minutes, reviews, memorandum, voice mail recordings, other audio recordings, and other documents and electronic records of Whole Woman's Health Alliance which refers to and/or otherwise mentions any of the following organizations and Whole Woman's Health Alliance's advocacy, interactions, relationship, involvement, and organization with: Whole Woman's Health of McAllen, LLC; Whole Woman's Health of San Antonio, LLC; Whole Woman's Health of Fort Worth, LLC; Whole Woman's Health of the Twin Cities, LLC; Whole Woman's Health of Peoria, LLC; Whole Woman's Health of Beaumont, LLC; Whole Woman's Health of Baltimore, LLC; and Whole Woman's Health, LLC.

Talk to you soon,

Adrienne

**ADRIENNE BRUNE**

*Attorney*

*Agency Ethics Officer*

*Office of Legal Affairs*

*Indiana State Department of Health*

*317.233.7270 office*

*317.233.7143 fax*

*[abrune@isdh.in.gov](mailto:abrune@isdh.in.gov)*

*[www.StateHealth.in.gov](http://www.StateHealth.in.gov)*



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## Brune, Adrienne

---

**From:** Brune, Adrienne  
**Sent:** Wednesday, April 18, 2018 11:37 AM  
**To:** 'Dipti Singh'; Stephanie Toti; Kathrine D. Jack, Jack Law Office LLC  
**Cc:** Carroll, Bart  
**Subject:** RE: Whole Woman's Health Alliance (ACL-000132-18) Non-Party Requests for Production Phone Call Request

Good morning:

Sorry for the delay. Bart and I have been unable to meet and discuss a summary until just now. We're happy to meet tomorrow. Would a time between 1:30 and 3:30 work?

For each request to the Non Parties, we would like complete production of the requested items. In an effort to expeditiously resolve this without having to take the lengthy step of utilizing outside counsel, the ISDH is amenable to making some concessions. The ISDH is agreeable to modifying the requests as follows:

1. To satisfy the ISDH's requests of (1)(a), (1)(b), (1)(c), (1)(e), and (1)(g), we propose the Non Parties provide the Operating Agreements, Articles of Incorporation, and Member Lists (if any) for the Non Parties in effect from August 11, 2017 to January 3, 2018. The ISDH does not object to the Non Parties redacting information regarding how members are paid or other financial terms.
2. (1)(d): Any and all meeting minutes of the Non Parties' Boards of Directors regarding or mentioning Whole Woman's Health Alliance for the three-year period immediately preceding the application date (August 11, 2017). If there is not a Board of Directors for each entity, then any and all meeting minutes of its managers regarding or mentioning Whole Woman's Health Alliance for the three-year period immediately preceding the application date (August 11, 2017). This includes Whole Woman's Health Alliance under its current and former names during this time period.
3. (1)(h): All surveys, findings, notices, complaints, citations, warnings, and other documents alleging a violation of the rules, regulations, or laws under which any clinic which performs abortions, of any kind, and which is operated by one or more of the Non Parties that has been issued for the three-year period immediately preceding the application date (August 11, 2017).

Thank you for your consideration of the above modifications to the Non Party requests.

Adrienne

**From:** Dipti Singh [mailto:dsingh@lawyeringproject.org]  
**Sent:** Wednesday, April 18, 2018 9:47 AM  
**To:** Brune, Adrienne <ABrune@isdh.IN.gov>; Stephanie Toti <stoti@lawyeringproject.org>; Kathrine D. Jack, Jack Law Office LLC <kjack@jacklawoffice.com>  
**Cc:** Carroll, Bart <BCarroll@isdh.IN.gov>  
**Subject:** Re: Whole Woman's Health Alliance (ACL-000132-18) Non-Party Requests for Production Phone Call Request

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Good morning, Bart and Adrienne.

I am writing to postpone our call until tomorrow. We haven't yet received the summary of what you'd like to discuss with respect to the nonparty requests and a phone call would be most productive after we have had an opportunity to review and consider your outstanding discovery issues. Could you email us the summary today and speak with us tomorrow afternoon ET instead?

Thanks very much.

Sincerely,

Dipti Singh\*  
Senior Counsel & Strategy Director  
Lawyering Project  
811 W. 7th St., 12th floor  
Los Angeles, CA 90017  
Phone: (646) 480-8973  
Fax: (646) 480-8828  
[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)  
\*Admitted to practice in California

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**From:** Dipti Singh  
**Sent:** Tuesday, April 17, 2018 10:10:26 AM  
**To:** Brune, Adrienne; Stephanie Toti; Kathrine D. Jack, Jack Law Office LLC  
**Cc:** Carroll, Bart  
**Subject:** RE: Whole Woman's Health Alliance (ACL-000132-18) Non-Party Requests for Production Phone Call Request

Good afternoon.

We are available at 12 pm et tomorrow. As we discussed yesterday, if you could send us a summary of the issues you'd like to discuss in advance of the call, we would appreciate it. We can use the below call-in information for the call:

Phone: (605) 472-5528  
Pin: 268831

Thanks very much.

Sincerely,  
Dipti

**From:** Brune, Adrienne <[ABrune@isdh.IN.gov](mailto:ABrune@isdh.IN.gov)>  
**Sent:** Tuesday, April 17, 2018 7:45 AM  
**To:** Stephanie Toti <[stoti@lawyeringproject.org](mailto:stoti@lawyeringproject.org)>; Kathrine D. Jack, Jack Law Office LLC <[kjack@jacklawoffice.com](mailto:kjack@jacklawoffice.com)>; Dipti Singh <[dsingh@lawyeringproject.org](mailto:dsingh@lawyeringproject.org)>